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**Soviet Legal Innovation
and the Law of
the Western World**

JOHN QUIGLEY

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SOVIET LEGAL INNOVATION AND THE LAW OF THE WESTERN WORLD

The government of Soviet Russia wrote new laws for Russia that were as revolutionary as its political philosophy. These new laws challenged social relations as they had developed in Europe over centuries. These laws generated intense interest in the West. To some, they were the harbinger of what should be done in the West and, hence, a source for emulation. To others, they represented a threat to the existing order. Western governments, like that of the Tsar, might be at risk if they held to the old ways. Throughout the twentieth century, Western governments remade their legal systems, incorporating an astonishing number of laws that mirrored the new Soviet laws. Western law became radically transformed over the course of the twentieth century, largely in the direction of change that had been charted by the government of Soviet Russia.

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Moritz College of Law,
the Ohio State University



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This book is dedicated to

Harold J. Berman

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Abbreviations

The following abbreviations for frequently cited items are used in notes in lieu of full citation.

AJIL	<i>American Journal of International Law</i>
CEDAW	“Convention on the Elimination of All Forms of Discrimination Against Women,” December 18, 1979, <i>United Nations Treaty Series</i> , vol. 1249, p. 13
Civil Code 1922	Grazhdanskii kodeks [Civil Code], SU RSFSR no. 71, item 904 (1922)
Chloros	A. G. Chloros (ed.), <i>The Reform of Family Law in Europe (The Equality of the Spouses – Divorce – Illegitimate Children)</i> (Deventer: Kluwer, 1978)
Constitution 1936	USSR Constitution, confirmed by Decree of the Eighth Extraordinary Congress of Soviets of the USSR, published in <i>zvestiia of the Central Executive Committee of the USSR and the All-Union Central Executive Committee</i> , December 6, 1936, no. 283
Criminal Code 1922	Ugolovnyi kodeks [Criminal Code], SU RSFSR, no. 15, item 153 (1922)
Criminal Code 1926	Ugolovnyi kodeks [Criminal Code], SU RSFSR, no. 80, item 600 (1926)
DSB	U.S. Government, <i>Department of State Bulletin</i> , U.S. Government Printing Office, Washington DC
ESC	United Nations, Economic and Social Council
ESCOR	United Nations, Economic and Social Council Official Records
Family Code 1918	Kodeks zakonov ob aktakh grazhdanskogo sostoianiia, brachnom, semeinom i opekunskom prave [Code of

Abbreviations

	Laws on Acts of Civil Status and on Marriage, Family, and Guardianship Law], SU RSFSR, no. 76–77, item 818 (1918)
Family Code 1926	Kodeks zakonov o brake, sem'e i opeke [Code of Laws on Marriage, the Family, and Guardianship], SU RSFSR, no. 82, item 612 (1926)
FRUS	Foreign Relations of the United States, U.S. Government Printing Office, Washington DC
FRUS Paris	U.S. Government, <i>Foreign Relations of the United States: the Paris Peace Conference 1919</i> (published 1943)
GA	United Nations, General Assembly
GAOR	United Nations, General Assembly Official Records
Labor Code 1918	Kodeks zakonov o trude [Code of Laws on Labor], SU RSFSR, no. 87–88, item 905 (1918)
Labor Code 1922	Kodeks zakonov o trude [Code of Laws on Labor], SU RSFSR, no. 70, item 903 (1922)
League Covenant	Treaty of Peace with Germany, Versailles, annex: Covenant of the League of Nations, June 28, 1919, <i>Consolidated Treaty Series</i> , vol. 225, p. 195
LNTS	<i>League of Nations Treaty Series</i>
PSZ	Polnoe sobranie zakonov Rossiiskoi imperii [Full Collection of Laws of the Russian Empire]
RSFSR	Rossiiskaia sovskaia federativnaia sotsialisticheskaiia respublika [Russian Soviet Federated Socialist Republic]
SC	United Nations, Security Council
SCOR	United Nations, <i>Security Council Official Records</i>
SGP	Sovetskoe gosudarstvo i pravo [Soviet State and Law] (periodical)
SU RSFSR	Sobranie zakonov i rasporiazhenii rabochego i krest'ianskogo pravitel'stva RSFSR [Collection of Enactments and Regulations of the Worker-Peasant Government of the RSFSR]
SSSR	Soiuz Sovetskikh Sotsialisticheskikh Respublik [Union of Soviet Socialist Republics]
Svod zakonov	Svod zakonov Rossiiskoi Imperii [Collection of Laws of the Russian Empire] (1913)
SZ SSSR	Sobranie zakonov i rasporiazhenii rabochego-krest'ianskogo pravitel'stva SSSR [Collection of Laws and Regulations of the Worker-Peasant Government of the USSR]

Abbreviations

UN	United Nations
UN Charter	Charter of the United Nations, June 26, 1945, U.S. Congress, Statutes at Large, vol. 59, p. 1031
UNTS	<i>United Nations Treaty Series</i>
Vedomosti SSSR	Vedomosti verkhovnogo soveta SSSR [Gazette of the Supreme Soviet of the USSR]

Preface

In the autumn of 1887, Vladimir Ilich Ulianov, a young Russian of a middle-class family, enrolled to study law at the Imperial Kazan University. Ulianov was not destined, however, to do well at the university. His elder brother had just been executed for an attempt on the life of the tsar. Like his brother, Ulianov traveled in anti-tsarist circles. At the university, Ulianov associated with revolutionary-minded students, and in December of 1887 he was expelled.

Ulianov did not give up on law study, however. He applied for re-admission at Kazan. Refused there, he requested permission from the government to go abroad to a university. That, too, was refused. Knowing that he would not be admitted to any Russian university in the normal way, he applied to become an external student at the university in St. Petersburg. That route would let him qualify in law, but he would not attend classes. He would study on his own. Ulianov's mother wrote a letter in support of his application, and he was admitted.

Ulianov learned and re-learned the law of tsarist Russia. Tsarist law was distasteful to Ulianov. For him, it rationalized and reinforced unequal social relations. It ensured that the downtrodden would remain so.

Despite his disdain, the youthful Ulianov studied what he needed to learn of tsarist law. In 1891, he sat for the examination in St. Petersburg to qualify for the practice of law. He not only passed, but scored the highest possible mark on every sub-part of the examination, the only

student that year to do so. Ulianov knew the hated law of the tsar better than any of his peers.¹

A generation later, Ulianov, by then known as Lenin, declared the tsar's legislation void – lock, stock, and barrel. Not an article of what Ulianov had mastered in 1891 would remain on the books. In its place would come new enactments, differently grounded, containing norms that would change the face of Russia.

Beyond Russia, Lenin's repudiation of tsarist law had worldwide ramifications. Lenin and the Bolshevik party he headed espoused legal concepts that challenged the foundations of Western society. The governments of the Western world did not provide a good life for their people, the Bolsheviks charged. People could live better, more productive lives without fear of the hardships that might befall them through the playing out of the forces of the market.

The overthrow of the tsar and his law set an uncomfortable precedent for the West. If the law of Russia could be overturned at the stroke of a pen, what then of the law of other countries? Could the common law of England, or the Roman law of Europe, as easily be turned aside?

As matters developed, the leaders of the Western world were able to maintain themselves and their legal orders. But to do so, they could not run in place. They parried Lenin's thrusts to blunt the impact in their realms of his biting critique of their rule. A dialectic developed between the Soviet Union and the West. In its efforts to counter the Soviet Union, the West absorbed many of the ideas it found threatening.

As Western leaders adjusted their policies, they changed the legal systems of their countries. The change did not come overnight or in a single package of new laws. Nor did it come at the same pace everywhere in the Western world. But come it did, and with a force that would render Western law by the turn of the twenty-first century light years different from Western law at the turn of the twentieth. Western law did not disappear, but it did not remain the same.

This interaction between the Soviet Union and the West was little understood when the Soviet Union departed the international scene

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in 1991. To Western leaders and to most analysts, the Soviet demise marked the end of an unpleasant episode, without a tomorrow. The Soviet Union was seventy years of a tragic mistake.

Communism was dead. Capitalism had defeated it and would replace it in the countries that had purported to follow it. The United States sponsored “rule of law” seminars and personnel exchanges, to plant the ideas of law as understood in the West. Communism was safely buried, and in its grave lay whatever ideas its advocates had promoted. This book explores how the ideas about law espoused by Lenin and his associates were received in the West.

I was launched into the study of law in the Soviet Union by the satellite (Sputnik) that was launched by the Soviet Union in 1957. The American government determined it must know more about the Soviet threat, a task that was complicated by the fact that American scholars had little access to Soviet society. The U.S. Congress passed the National Defense Education Act. Efforts were to be made in higher education to understand the USSR and to counteract the Soviet threat. President Dwight Eisenhower negotiated a treaty with the Soviet Union for the exchange of scholars. The Soviet government sought access to the West, and the West sought access to the Soviet Union. Each calculated that it would gain more than it would lose.

I was part of this high-stakes chess match. My base of operation was just up the hill from the Kremlin, the center of Soviet political power. Leonid Brezhnev had assumed control, and the Cold War showed no signs of abating. I gained an opportunity to observe, albeit within limits, the society whose confrontation with the West was the defining circumstance of an era.

What was striking to a young scholar about the concepts promoted in Soviet legal and political philosophy was precisely the challenge they posed to the West. Everything I had previously been told was good was evil. The free market was bad. Only an organized economy could serve social needs. The rule of law, seen in the West as the basis of social order, was only a stop-gap approach to the proper regulation

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of life in society. Instead, life should be organized so that law is not needed. Rather than punishing individuals who violate rules, society should reorganize itself to eliminate the urge to bad conduct.

One might embrace this philosophy as foretelling an improvement over society as conceived in the West. One might reject it as utopian, or, even worse, as a cover for institutionalized force. In any event, it was a point of view that required a re-thinking of concepts.

At the level of international politics, statesmen too were examining the Soviet ideas and reacting to them. Their reaction forms the subject of this book. In that reaction may be found a key to what differentiates Western law of today from Western law as it stood when Lenin sat for the St. Petersburg law examination in 1891.

John Quigley
Columbus, Ohio

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PART ONE

THE SOVIET CHALLENGE

The Industrial Revolution and the Law

FROM THE MOMENT THE BOLSHEVIKS TOOK POWER IN Russia, Western governments worried that the Soviet idea might spread.¹ Earlier revolutions had spread like a “contagion” – the Papal Revolution of the twelfth century, the Protestant Reformation of the sixteenth century, the English Revolution of the seventeenth century, the American Revolution of the eighteenth century.

These revolutions, wrote Harold Berman, had “enormous all-Western repercussions,” namely, “a reaction of fear and hostilities in other countries – fear of the spread of the revolutionary virus, hostility toward the nation that was its bearer.” The Western world was united by ties of history and the kinship of the monarchies. What happened in one country affected another.

The process of reaction to revolution, as described by Berman, was that “when the revolution had settled down in its home country, the other countries accepted a mild version of it.” Berman detailed the impact of these revolutions, including the Bolshevik: “after the Luther revolution had subsided in Germany, absolute monarchies with a strong civil service appeared in England, France, and other countries; after the Puritan Revolution had subsided in England, constitutional monarchies and quasiparliamentary institutions emerged on the European continent in the late 1600s and early 1700s; after the French and American revolutions had subsided, the English enlarged the electorate to include

the middle classes in 1832; and after the Russian Revolution had subsided, ‘socialist’ or ‘new deal’ governments appeared in the 1930s in Western Europe and the United States.”²

The most recent social revolution had been but a century before. Napoleon came to power in France and challenged the notion of monarchy, alarming European royalty. To thwart domestic unrest, the monarchs of Europe accepted constitutional limitations to accommodate Napoleon. The absolute powers of monarchs devolved onto legislative bodies and government ministers.

Western leaders viewed the Bolshevik Revolution with the same dread with which their predecessors had viewed Napoleon. “The attitude of Europe and America to the Russian Revolution has been as blind and as irrational as their attitude to the French Revolution a century and a half ago,” said the socialist lawyer Harold Laski. “In each case, they sought to build a *cordon sanitaire* about ideas because the rights of property were called into question.”³

Socialist Ideas in Nineteenth Century Law

The threat the Soviet government posed was the greater because it did not base itself on concepts homegrown in Russia. Its grounding was in ideas developed in Europe, with Karl Marx as the principal exponent. Those ideas involved an analysis of an industrial revolution that had been born in England and then spread to the Continent. If Marx’s ideas could inspire revolution in backward, agrarian Russia, they had even greater potential in the countries that had spawned the industrial revolution.

Marx’s ideas had already found reflection in the law of Europe. The industrial revolution put pressure on governments to protect those who could not survive in the competition to make a living. The dark side of industrialization was apparent to any who would look. The mechanization of manufacturing came at a time when the population

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of laborers was high. The new machinery could produce with less labor input. Workers were in a weak position to seek good wages or conditions of employment. Owners of manufacturing establishments could extract labor at low wages.

The extremes of wealth and poverty were chronicled by novelists and social commentators. Robber barons fleeced the public, unhampered by any countervailing force. Governments did not restrain capitalists. The economy was a perpetual roller coaster. In good times, companies overproduced, and when the goods could not be sold they laid off workers, resulting in recessions or depressions. Irreplaceable natural resources were exploited for profit, with little control. In some industries, instead of the competition that was the *raison d'être* of the system, the strong companies drove out the weak, creating monopolies.

Marx saw no way out of the exploitation so long as ownership of the means of production remained in private hands. The issues that Western governments addressed were to Marx only the symptoms of a fatally ill body politic. The reforms were mere tinkering with a machine that could not function. Marx described and analyzed the concentration of productive resources that accompanied the industrial revolution.⁴ He said that the capitalist order was based on profit, and that in order to compete successfully, entrepreneurs had to give their workers as little as possible.⁵ In the cycles in economic life that led periodically to overproduction of goods, with high unemployment, Marx saw an inevitability.⁶ A mechanism needed to be found to ensure appropriate levels of production at all times.

Marx's *Das Kapital* gave a name to the socio-economic order that emerged from the industrial revolution. Capital was the money invested in an enterprise, and Marx used the term, adding an "ism," to define the entire system.

Marx's *Das Kapital* was highly influential. By choosing the term "capitalism," Marx focused on the less human side of things, and the term became a pejorative. Defenders of the existing order scurried to invent other terms that would put the system in a more favorable light.

They called it “free enterprise” or “market economy” or “the free market.”

Marx was not alone in challenging the sweatshops of Europe’s towns and cities. Nineteenth century social reformers of less radical persuasion tried to improve the situation. Governments assumed a role to ameliorate the abuses. In England, child labor laws were enacted to keep factory owners from working children inordinately long hours.⁷ In France, old age pensions were introduced.⁸

The concept that law is a product of struggle of social classes was already current in Europe in the late nineteenth century.⁹ Marxist thought established itself there in a political movement called social democracy. “The theory of law as a product of class struggle,” wrote Roscoe Pound, “drew attention to the unequal operation of doctrines derived by the nineteenth-century method of abstraction upon the basis of an assumed natural equality when applied in a society in which industrial progress had resulted in well defined classes. This unequal operation of legal precepts based on a theoretical equality became the subject of study by a group of socialist jurists.”¹⁰

The Austrian Karl Renner or the Dutchman Willem Bongers viewed law as a product of struggle between social classes.¹¹ The view of law as class-based also drew the attention of jurists who did not define themselves as socialist. They, too, argued for changes in the law to protect those who lacked economic power.¹²

Even before the Bolshevik Party came to power in Russia in 1917, the West paid heed to the Marxist critique. The revolutionary activity in Europe in 1848, inspired by Marxist ideas, brought a reaction from European governments, concerned at the prospect of the revolution that was being threatened by those who shared Marx’s analysis.¹³

Reforms were introduced to accommodate working-class demands, just as, following Napoleon’s challenge to monarchy, a number of countries introduced constitutional reform in the direction of republicanism. In the 1880s, Germany instituted the first social insurance programs. To German workers, insurance for illness was provided in 1883,

for on-the-job injuries in 1884, and for old age in 1889.¹⁴ In Great Britain, by the late nineteenth century, socialist ideas influenced legislation being adopted by Parliament.¹⁵ Western governments began to intervene in the economy, seeking to avoid the damaging effects of cyclical changes.¹⁶

New political parties were formed, espousing reforms in the direction suggested by Marx, but stopping short of advocating the overthrow of the owning class. Social democracy took hold in Scandinavia and elsewhere in Europe, becoming eventually the major political force on the continent.¹⁷

Even across the Atlantic, efforts were made to curb what were viewed as the excesses of capitalism. In 1887, the U.S. Congress established the Interstate Commerce Commission to regulate the prices charged by railroads.¹⁸ U.S. Senator John Sherman introduced legislation to stop monopolistic activity by large firms. The U.S. Congress adopted it in 1890: "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."¹⁹

To colleagues who thought that his bill was overly restrictive of business, Sherman invoked the specter of revolution: "Sir, now the people of the United States as well as of other countries are feeling the power and grasp of these combinations, and are demanding of every Legislature and of congress a remedy for this evil, only grown into huge proportions in recent times. They had monopolies and mortmains of old, but never before such giants as in our day. You must heed their appeal or be ready for the socialist, the communist, and the nihilist. Society is now disturbed by forces never felt before."²⁰

More broadly in the United States, a movement developed to curb what were viewed as the excesses of a free market economy. Progressivism exerted a strong influence in the early years of the twentieth century, its adherents securing reform legislation at the state and federal levels of government. Progressives promoted regulation of banks and railroads, and women's suffrage.²¹ Progressives viewed themselves as

an alternative to socialism. Progressive leaders decried “the menace of Socialism as evidenced by its growth in the colleges, churches, newspapers,” viewing their reform efforts as blunting the calls for more radical political change then coming from American socialists.²²

Despite these initiatives in Europe and North America, Western law underwent no fundamental change during the nineteenth century. Western law remained rooted in the social conditions that predated the industrial revolution. Europe’s nineteenth century civil codes, Roscoe Pound wrote, “antedated modern industrial conditions; . . . In the juristic new start represented by the codes such a thing as a class of industrial laborers was unknown to the law. At that time the law only knew of agricultural laborers.” Even the German Civil Code adopted in 1900, Pound noted, failed to account for industrial conditions.²³ In the United States, the courts protected corporations against legislatures that tried to regulate them.²⁴

Economic Needs as Legal Rights

THE ASCENT TO POLITICAL POWER OF A PARTY ESPOUSING Marxism heightened the threat to Western governments. Soviet political and legal philosophy posed a challenge to the West on issues spanning the full breadth of the law. In regard to the economy, a new notion of rights of individuals on economic issues was espoused. Crime policy was viewed in a new light. Equality of the sexes figured prominently in Soviet thinking. Homosexuality and prostitution were analyzed anew. Even relations between nations were revisited, in particular, Western nations' control over colonies.

The Soviet analysis of economics was central to the new thinking on all issues. The revolutionaries were steeped in the Marxian analysis of capitalism. Economics, proclaimed Friedrich Engels, determined other aspects of society: "the production of the means to support human life – and, next to production, the exchange of things produced – is the basis of all social structure."¹

As Marx grasped the effects of the industrial revolution and how it changed society from the rural-based economies that preceded it, he concluded that this radical change in economics had changed the political and social order.

In Russia, the government of the Bolshevik Party that emerged out of the 1917 revolution took Marx's analysis seriously. It derided Western governments for providing formal legal equality to citizens but for

presiding over an economic order that kept many citizens unequal in fact.² Lenin said that politics based on capitalism proclaimed formal equality among citizens, but that this formal equality masked a factual inequality of social classes.³ This inequality was reflected, argued Soviet jurists, in the legal order of a society based on capitalism.

Western law gave prominent place to private property and freedom of contract, but these were used oppressively by the owning class: "Under the conditions of economic and political domination by capital, freedom and democracy are instruments of the bourgeoisie in suppressing the exploited classes."⁴

Soviet economics posed a threat to the West by the demonstration effect of Soviet policies. If the Soviet government could achieve what it proclaimed, then there was something fundamentally wrong with capitalism. The Soviets challenged the West in the name of justice and equality. Whereas the West asserted the sanctity of private property and freedom of contract, the Soviets replied that these yielded economic injustice.

The Soviets envisioned a social order in which inequity would disappear. They proclaimed a goal of economic well-being for all citizens. The Soviet government undertook to organize and operate the nation's economy, viewing such control as essential to providing full employment and social benefits. The state would plan production and avoid the cyclical changes in employment levels found under capitalism.

The Soviet government nationalized industry.⁵ It nationalized private land estates as well as the estates of the church, which were vast. In a Decree on Land, it put these properties in the charge of newly created local councils.⁶ "Land to the peasants" had been a Bolshevik slogan, and it was one of the most popular. The Orthodox church had held a third of the farm land, and its power was resented. The Russian peasantry had always been poor, operating under feudal conditions long after they had been eliminated in Western Europe. For the peasants, the prospect that they would control the land was dizzying. To

the notion of private ownership, the Decree on Land was a powerful challenge.

When a civil code was adopted in 1922, it reinforced the nationalization of land by stipulating that land could not be the subject of commerce. It proclaimed, “Land is the property of the state and cannot be the subject of private trade.”⁷

Civil-legal relations were subjected to overriding societal concerns. The civil code of Russia, adopted in 1922, was called by one Soviet lawyer, “the classic model of a collection of civil legislation of a socialist state.” He contrasted it to Napoleon’s civil code of 1804, which he called “the classic model of a civil code of a bourgeois society.”⁸

The 1922 civil code proclaimed a societal interest underlying civil relations by stipulating that the code protected civil-legal rights “except for situations in which they are implemented in a way that contradicts their socio-economic purpose.”⁹ The civil code stipulated that if a contract were concluded in a way that harmed state interests, it would be invalid, and any gain acquired under it would forfeit to the state treasury.¹⁰

Worker Rights

Soviet legislation of the 1920s promised to ensure the welfare of the population. Everyone would have a roof over their heads, they would be provided medical care, and they would have jobs. No government in history had assumed such responsibilities.

Laws on worker rights were perhaps the most radical. A right to work was guaranteed to “all able-bodied citizens” at “the compensation established for the given type of work.”¹¹ A worker, once employed, was protected by a tenure system. A worker who performed a job properly was guaranteed virtually life-time employment. In labor relations in the West, employers had complete discretion to dismiss a worker, under

a doctrine known as employment at will.¹² But Soviet law required management to show unfitness to perform the job before an employer could dismiss a worker.¹³

Health insurance was instituted for workers, paid by employers.¹⁴ Disability benefits were established for time off during illness.¹⁵ Benefits for the unemployed were established.¹⁶ Payment of salary was guaranteed to workers if out of work on temporary disability.¹⁷ Lenin taunted Western governments for not providing the rights that Soviet law had introduced.¹⁸

An eight-hour maximum work day (six days a week) was decreed,¹⁹ shortened in 1928 to seven hours.²⁰ Old-age pensions were provided starting at age 50.²¹ Stays in health spas were to be allocated free of charge to workers employed in state-owned factories.²² Special schools were established to enable workers to gain high school and higher degrees.²³

Wages and work conditions were to be established in union-employer agreements negotiated through collective bargaining. In case of disagreement over the terms, the Commissariat of Labor was given decision-making authority.²⁴ The Commissariat established special courts to decide such disputes.²⁵

Attacking the capitalist idea that the owner decides how to run an enterprise, Soviet legislation called for elective worker councils in private enterprises, to make basic policy decisions on matters such as the purchase of raw materials and the sale of finished products.²⁶ Western capitalists were threatened with a loss of control over their own investments.

Perhaps the most significant challenge to the West in Soviet labor policy was the doctrine that able-bodied citizens have a right to a job. Declaration of such a right was particularly dangerous when the world economy shortly entered the Depression.

The industrial revolution had, as we saw, led to what Marx called an industrial reserve army, large numbers of persons who were permanently unemployed. Workers throughout the nineteenth century had

demanded that the government assure them of jobs. During the 1848 revolution in France, the workers forced the provisional government to issue decrees to guarantee work to every citizen, and to establish government-run factories.²⁷ The decrees were not implemented, but the demand remained part of the workers' political arsenal.

The Soviet government backed up its proclamation of a right to work with projects that provided employment. In the late 1920s, the government took major steps toward nationalizing the economy, with the announcement of the first five-year plan. The government started new industry and created jobs in the process.²⁸ Unemployment fell sharply as a result.²⁹

As Western economies fell into depression after September 1929, with accompanying mass layoffs of workers, the Soviet economy provided high levels of employment. Implementation of these worker rights by the Soviet government was far from perfect, but nonetheless the challenge had been issued.

Worker rights were enshrined in the 1936 Soviet constitution. It declared that the government would ensure employment to all. Workers were guaranteed a seven-hour work day (42 hours a week), shortened to six hours in physically demanding jobs, and to four hours in especially difficult jobs. Annual vacations were guaranteed, as were vacation facilities in the form of country retreats.³⁰

In the West, worker rights, to the limited extent they existed at all, were not found in constitutions. Constitutions were reserved for political rights, like association and speech. Coming in the midst of the Great Depression, the Soviet constitutional guarantee of a job was a formidable challenge.

But jobs were only the beginning. The 1936 constitution said that pensions would be guaranteed to those retiring from jobs, as well as to those out of work because of illness. Free medical care would be guaranteed as well.³¹ That was a particularly bold promise, and one the government would be hard pressed to fulfill. Nonetheless, the idea of a constitutional right to free medical care differed profoundly from

the situation in the West, where governments took little responsibility for medical care, leaving the matter almost entirely to the free market.

Education, too, would be guaranteed, free of charge through the university level. In addition to free tuition, university students would receive state-provided living allowances.³²

Labor Laws Protecting Women

Radical change also came regarding women as workers. August Bebel had written that women were the victims of discrimination. They are “paid off with wages that are too high to die, and too low to live on.”³³ Soviet labor legislation gave women rights that were accorded them in other countries only much later. In the event of staff cuts, women were not to be dismissed more readily than men, and single mothers with children under one year of age were to be given preference in retention.³⁴ Paid maternity leave was decreed with a guarantee of return to prior employment following childbirth. Benefits would be paid to manual workers eight weeks before and eight weeks after confinement, and to non-manual workers six weeks before and six weeks after confinement.³⁵ Nursing mothers were given the right to a job near their homes and to government-provided child care near their home or place of employment.³⁶ Expectant mothers were not to be transferred or sent on business journeys without their consent; overtime was forbidden for manual workers from the fifth month of pregnancy and while nursing.³⁷

These protective laws ran the risk, to be sure, of making women less desirable employees than men. But they were seen as necessary to allow women to combine child-rearing with a work career.

Women’s equality was included in the 1936 constitution, which said that women were guaranteed “equal rights with men in all aspects of economic, governmental, cultural, and socio-political life.” In labor

relations, said the constitution, women were guaranteed an equal right with men to employment, equal pay, equal vacation rights, and equal social insurance benefits. They were also guaranteed equal educational opportunities. State subventions were guaranteed to single mothers and to mothers with large numbers of children, working mothers were guaranteed time off with pay during pregnancy and childbirth, and state-provided birthing clinics, nurseries, and kindergartens.³⁸

Housing, Health Care, Education

Soviet law also challenged the West by guaranteeing economic welfare even beyond the labor relationship.³⁹ Housing was a serious problem in Russia, and the Soviet government took radical steps to address it. The government began housing construction in the towns and cities to which migration occurred in connection with industrialization. A. Allan Bates, Director of the Office of Standards Policy at the U.S. Department of Commerce, said that Soviet housing construction eventually made the USSR “the only nation which has solved the problem of providing acceptable low cost housing for its masses of citizens.”⁴⁰

Immediately after taking power in 1917, the Soviet government declared a rent moratorium for the duration of the World War for workers earning less than 400 rubles per month, which was the average wage of a skilled worker.⁴¹ In 1919, the Soviet government froze rents at the levels existing on July 1 of that year,⁴² and state-owned factories began to provide apartments rent-free to workers.⁴³ In 1921, it decreed abolition of payment for rent and utilities for urban workers in nationalized housing.⁴⁴ Whereas rent payment was soon re-introduced, it was kept to levels set by statute.⁴⁵ A tenant in public housing was given permanent tenure.⁴⁶ The government introduced rent control and proclaimed a goal of providing housing free of charge to working people.⁴⁷

Death of a breadwinner gave rise to a right to a living subsidy under a “family insurance” scheme enacted in 1921. Allowances would be paid

for a child up to sixteen years of age, for a wife with a child up to eight years, and for parents who were unable to work.⁴⁸ Free government-provided medical care was espoused as a goal. The government did not have the means to put the idea into practice in the 1920s and had to wait until the industrialization of the 1930s to do so.⁴⁹

Equality in the Family

EVEN BEYOND THE LABOR ARENA, A KEY BOLSHEVIK ISSUE was the rights of women. All through the period leading up to the 1917 revolution, the party criticized Russia and the West for keeping women in a status of legal inferiority. When the Bolsheviks assumed power, women's equality was one of the first issues addressed, by reforms in domestic relations law. The Soviet approach broke sharply with Western law.

Western Law on Status of Spouses

Max Rheinstein, a scholar of European law, described nineteenth century family relations as "patriarchal in structure." The husband-father was "the undisputed head; he was the ruler who governed his small realm just as the King of France, after the restoration of the Bourbons, governed his large one. The householder's subjects were his wife, his children, and his servants, domestics as well as farmhands or the craftsman's apprentices and journeymen, who often enough lived in the master's house as members of the household."¹ Wife beating was tacitly permitted. In English common law, a husband enjoyed the right of "chastisement" over his wife, which allowed him to beat her.

In Europe at the time, the husband was accorded a role of predominance in the marital relationship.² In Swedish law, a woman was considered to be under her husband's guardianship.³ Under English common law, as was followed at the time in both Canada and the United States, the husband was head of the household and the legal representative of the wife. Under France's Civil Code, a wife owed "obedience to her husband."⁴ A wife was obliged "to live with her husband and to follow him wherever he chooses to reside."⁵ The status of a married woman, under the French code, involved so few rights that she was considered as lacking legal capacity.⁶

This predominant role was accorded to the husband, to be sure, on the premise that he act to the benefit of his wife and children.⁷ The husband was obliged to provide for the family as breadwinner.⁸

A husband had the right to make important family decisions. The German Civil Code gave a husband the right to "decide all matters of matrimonial life," including place of residence.⁹ A wife in Germany needed her husband's permission to go on a journey or to obtain a passport.¹⁰ The Swiss Civil Code characterized the husband as "head of the conjugal union" who "chooses the place of abode."¹¹ The Dutch Civil Code called the husband "head of the family"¹² and said that "the wife owes obedience to the husband and is bound to follow him wherever he thinks fit to take up his domicile."¹³

The Austrian Civil Code characterized the husband as "head of the family" and obliged the wife "to follow her husband to his place of residence" and "as far as domestic order requires, to obey and to compel others to obey the measures directed by him."¹⁴ The German code gave the husband a right to manage his wife's property and to give his wife's employer notice of termination of the employment.¹⁵ Under the Dutch code, the husband administered the wife's property, including personal chattels.¹⁶

A woman, upon marriage, took the man's surname, a result required by law in some countries.¹⁷ In Norway, a wife had "the right and the duty to bear the husband's name."¹⁸ In some countries, like the United

States, no such legal requirement existed, but strong custom made it difficult for a wife not to adopt the husband's surname.¹⁹

A husband's nationality controlled that of the family, on the rationale that the husband was its head. The marriage of a woman to a man of a different nationality changed her nationality automatically to that of the man.²⁰ Norway's marriage law of 1918 was typical: "A foreign woman acquires by marriage with a Norwegian citizen the latter's nationality."²¹

Divorce in Europe was severely restricted, and for women it was typically less accessible than for men. A spouse had to prove a breach of the marriage contract in order to obtain a divorce. In France, divorce was available only for adultery, condemnation to infamous punishment, or grave violation of marital duties.²² In Britain as well, divorce was available only for adultery, and according to statute, a husband need prove adultery only, whereas a wife had to prove cruelty or desertion in addition to adultery.²³

In Germany, grounds were more numerous. A spouse had to show fault, examples of which were adultery, bigamy, insanity, unnatural practice, attempt on a spouse's life, or willful desertion.²⁴ Swedish law was more liberal, permitting divorce for specified fault grounds, but without proof of fault if the spouses had been separated for one year under a separation decree or three years without a separation decree.²⁵

Russian law on the family fell within the European pattern. Russia under the tsars, if anything, was even more traditional in family matters, as the arrangement of marriages by parents was widely practiced. Marriage and divorce were not handled by the government's courts, but through ecclesiastical rules and institutions. For Roman Catholics, divorce was not provided. For Russian Orthodox, who accounted for the bulk of the population, divorce was available only upon proof of specified grounds, with proof requirements that rendered divorce quite difficult.²⁶ A wife was "obliged to obey her husband as head of the family."²⁷ A Russian woman who married a foreigner lost her

Russian nationality.²⁸ In Russian law, a woman upon marriage automatically assumed the man's surname, with no option to retain her own surname.²⁹

As for the place of abode of the family, a woman under Russian law was obliged to reside at a location selected by the man.³⁰ Regarding working outside the home, a woman could take a job only with her husband's consent.³¹ A husband's legal power over his wife, said one Russian commentator in 1896, was "unconditional," regardless of "how severe for the wife this power might be in a particular situation."³²

A Revolution in Domestic Relations Law

Soviet innovation in domestic relations was nothing short of dramatic. The Bolshevik government rewrote family law on assumptions of equality between woman and man, rejecting the law as it existed in the West. Fewer than two months after taking over the Winter Palace in St. Petersburg, the Bolshevik government adopted a decree on marriage, one of its first legal enactments on any subject.³³

A separate decree was adopted on divorce. Divorce was to be granted at the request of either party, without any proof of grounds: "A marriage shall be dissolved," read the decree, "upon the request of both spouses or of either one."³⁴ With the stroke of a pen, the ecclesiastical strictures on divorce were gone. Under the divorce decree, if the judge found that either or both of the spouses was asking for a divorce, it was to be granted automatically.³⁵ If both spouses sought the divorce, they could, instead of going before a judge, simply register their divorce at the civil registry.³⁶

Within a year, a full code on the family was enacted, the first branch of law to be fully codified. This 1918 code repeated the content of the two 1917 decrees but introduced additional innovations.

The code gave women equal rights in all matters relating to marriage.³⁷ Marriage could be contracted only with the consent of both

Equality in the Family

spouses.³⁸ As in the 1917 decree, divorce was available on demand. If both parties desired a divorce, they could simply register it at the record office. If one party only sought a divorce, it would be granted by a judge.³⁹

The 1918 code stated that marriage would effect no change in citizenship if the nationality of the spouses differed.⁴⁰ The code required spouses to adopt a common surname but permitted it to be either that of the woman or that of the man, or a double surname combining the two.⁴¹ A new family law code adopted in 1926 eliminated the requirement of adoption of a common surname, permitting the spouses to retain their own surnames.⁴²

If one spouse were to change residence, the other, under the 1918 code, was not obliged to follow.⁴³ A wife was given equal legal authority with the husband in decisions affecting their children.⁴⁴

As to property, a wife controlled her own: "Marriage does not create commonality of the property of spouses."⁴⁵ Tsarist law had provided for community property between spouses. The 1918 code eliminated community property in order to reduce the economic consequences of marriage, in line with a Marxist approach to marriage. Under socialism, marriage was not to be motivated by economic considerations but was to be based solely on mutual affection. Spouses would be financially autonomous from each other. No provision for alimony was made in the 1918 code.

Engels' Analysis of the Family

The Soviet innovations in family law flowed from a Marxist analysis of social relations. Under this analysis, family law in capitalist countries oppressed women by the privileges it gave to men.⁴⁶ Family relations occupied a prominent place in the Marxian analysis of society. In the *Communist Manifesto*, Friedrich Engels and Karl Marx characterized the relation between the sexes in capitalist society as one of exploitation

of women: “The bourgeois sees in his wife a mere instrument of production.”⁴⁷

The marital relationship was the subject of a book-length study by Engels, *The Origin of the Family, Private Property and the State in the Light of the Researches of Lewis H. Morgan*. Monogamy, Engels wrote, emerged with the advent of private property, “the express purpose being to produce children of undisputed paternity; such paternity is demanded because these children are later to come into their father’s property as his natural heirs.”⁴⁸ Hence, marital fidelity was demanded of women, but not of men.

Women, Engels said, were forced into marriage for survival because employment opportunities were limited. A woman could do little in life other than marry. She was a virtual captive in the marital relationship. Disadvantaged economically, she was forced to marry to maintain an existence.⁴⁹

Engels did not, however, view this situation as inevitable. Viewing the matter in historical terms, he found domination of women by men to have commenced only with the emergence of private property. Engels predicted that the fall of capitalism would bring equality:

[B]y transforming by far the greater portion, at any rate, of the permanent, heritable wealth – the means of production – into social property, the coming social revolution will reduce to a minimum all this anxiety about bequeathing and inheriting. Having arisen from economic causes, will monogamy then disappear when these causes disappear? One might answer, not without reason: far from disappearing, it will on the contrary begin to be realized completely. For with the transformation of the means of production into social property there will disappear also wage labor, the proletariat, and therefore the necessity for a certain – statistically calculable – number of women to surrender themselves for money. Prostitution disappears; monogamy, instead of collapsing, at last becomes a reality – also for men.⁵⁰

At the turn of the twentieth century, gender equality was taken up as a political issue by the social-democratic wing of the Marxist movement. Its foremost exponent was August Bebel, a founder of social democracy in Germany. Bebel's 1904 book *Die Frau und der Socialismus* [Woman and Socialism] bemoaned gender discrimination as found in Western law and found capitalism an impediment to equality.⁵¹

Soviet Reliance on Marx and Engels

The Bolsheviks took Engels' analysis to heart. Alexandra Kollontai, who served as People's Commissar of Social Welfare, analyzed the marital relationship as one in which property considerations predominated.⁵² Lenin spoke harshly about the regime of divorce in Western law. Even if divorce were available in a formal sense, he said, women were often compelled to remain in an unwanted marriage for financial reasons. For a woman, "the right of divorce in most cases remains unrealizable under capitalism, because the enslaved sex is oppressed financially, because the woman in any democracy remains a 'domestic slave' under capitalism, a slave locked up in the bedroom, the children's room, the kitchen."⁵³ Lenin spared no words in condemning tsarist law on marriage and divorce as "a source of bourgeois filth, of depression, or servility."⁵⁴

Some Soviet lawyers thought that the state should not be involved in regulating marriage. Marriage should be viewed as a private matter between individuals.⁵⁵ Marriage should be eliminated as a legal institution.⁵⁶ However, the approach reflected in the early Soviet legislation was to retain marriage as a legal institution but to eliminate inequality. A woman would be legally and financially a man's equal. A woman once married would be equally able with the man to terminate the relationship, because she would be able to find employment after a divorce.

One Step Backward

The 1918 Soviet family code, like other early Soviet laws, was a statement of revolutionary principle. It broke with tradition to prepare society for the advent of a socialist order. In certain respects, it was too far ahead of its time to be practical. The Soviet Russian economy did not move ahead as fast as the law. In making woman and man equal, the family code separated their property. In an economy in which men were the main breadwinners, this provision disadvantaged women upon divorce.

A new family code was promulgated in 1926. It stepped back from the bold pronouncements of the 1918 code on marital property, and to some extent even in marriage and divorce. The steps backward were seen as necessary to protect the financial interests of women because their earning capacity had not reached that of men, and also to ensure proper care of children.

Unlike the 1918 code, the 1926 code deemed property earned by the spouses during the marriage as community property.⁵⁷ The 1918 code had run afoul of the fact that, during the 1920s, women were not able to earn a salary on a par with men and the social base for financial autonomy between spouses therefore did not exist. Community property was revived from tsarist law to protect women. Dmitrii Kurskii, commissar of justice, said there were too many cases “where a worker’s wife, a housewife, runs the whole house, looks after the upbringing of the little children,” but “does not receive anything for her pains after the divorce because the husband – the worker – keeps everything.”⁵⁸

Another element of retreat in the 1926 code was its recognition of *de facto*, or common law, marriage. Many couples lived together unregistered in the 1920s, and the break-up of these relationships often worked a hardship on the woman because job opportunities were limited. The 1926 code said that such an informal marriage was the equivalent of a registered marriage for purposes of property rights.⁵⁹

The 1926 code provided for the possibility of alimony. Alimony could be ordered only if one of the spouses was unable to work, or, though able to work, was unemployed.⁶⁰ The rationale was to provide for women who could not find work in the 1920s, when unemployment was high. Alimony could be collected only for one year after a marriage ended.⁶¹ The idea of a woman living for years on her husband's earnings still rankled in light of the ideas of gender equality.

Kollontai was outraged at the retrenchment reflected in the 1926 code. If women or children were disadvantaged financially, she thought the state should provide for them. Child support and spousal support obligations should be eliminated. Kurskii responded that “during the present years of transition this problem must be solved on the basis of existing conditions.”⁶²

The Challenge of Soviet Family Law

Despite the 1926 changes, equality remained regarding relations within the marriage and upon its termination. The view abroad of Soviet family law, even after 1926, was of a new and radically different body of law. The ease of divorce in the Soviet legislation was seen as a codification of a “free love” approach. In the West, Soviet family law was viewed as revolutionary.⁶³

The Soviet challenge to the traditional family was perhaps more ominous to the West even than the challenge to property rights. In 1918, Lenin already claimed credit for legislation that ended the traditional legal inequality of women: “The Bolshevik, Soviet revolution,” he said on International Women’s Day 1918 (March 8), “cuts at the root of the oppression and inferiority of women more deeply than any party or any revolution in the world has dared to do. Not a trace of inequality between men and women before the law has been left in Soviet Russia. The particularly base, despicable, and hypocritical inequality of marital

and family rights, inequality in relation to the child, has been completely abolished by the Soviet government.”⁶⁴

Lenin boasted in 1919 that Soviet Russia had done “everything required of us to put women in a position of equality.” He chided Western Europe for having done less for women in the supposedly enlightened era since the French Revolution: “in the course of two years of Soviet power in one of the most backward countries of Europe, more has been done to emancipate woman, to make her the equal of the ‘strong’ sex, than has been done during the past 130 years by all the advanced, enlightened, ‘democratic’ republics of the world taken together.”⁶⁵

Leon Trotsky struck a similar note. “The October revolution honestly fulfilled its obligations in relation to woman,” he wrote of the early post-revolution years. Trotsky mentioned both legal rights and access to public life for women: “The young government not only gave her all political and legal rights in equality with man, but, what is more important, did all that it could, and in any case incomparably more than any other government ever did, actually to secure her access to all forms of economic and cultural work.”⁶⁶

Children and the Law

THE BOLSHEVIKS TURNED UPSIDE DOWN THE LAW ON THE legal status of children, on child-bearing, and on the upbringing of children. As we saw in Chapter 3, mother and father were to be equal in authority in making decisions about the upbringing of children. This legal equality of the parents gave a more prominent role to the mother. Additionally, a concept of the responsibility of society as a whole prompted other innovations. The Bolsheviks' economic analysis infused their approach as well.

Paternity

In one of its more radical features, the 1918 family code provided for collective paternity. If no man acknowledged a child, the mother could bring a legal action, as in other countries, to establish paternity. The innovation came in those situations in which the woman had had multiple sexual partners around the time of conception. In most countries, the court takes evidence to determine the identity of the child's father. But the 1918 family code, in a major departure, said that all the men should be financially responsible for resulting offspring. It mattered not which one actually fathered the child.¹

This provision produced negative results. Where courts ordered two or more men to pay support for a child, the mothers had difficulty

enforcing the order against any of them. Experience under the 1918 code was that the multiple “fathers” felt no real obligation toward the child.

The 1926 code reverted to the traditional approach to paternity. It said that if the woman had had sexual relations with more than one man around the time of conception, the court must determine which one was most probably the father, and impose financial responsibility on that man alone.² Elimination of the collective responsibility of several men aimed at providing better protection to the child.

Adoption

Adoption was outlawed in the 1918 family code: “From the date of entry into force of this law, adoption of related or unrelated children is not permitted. Any adoption after the date indicated in this article produces no obligations or rights for those adopting or those adopted.”³ The theory was that a child left without parents should be reared communally, rather than in another private family. Adoption, it was feared, might lead to the exploitation of child labor by adoptive parents.⁴

As with the 1918 code’s collective paternity provision, the adoption provision turned out to be impractical. The years following 1918 had not been good for children. Thousands of children were left parentless by the civil war and the famine that followed. Children roamed in gangs, stealing and robbing to survive. The people called them “besprizornye,” children without supervision. Communal childcare facilities had not materialized. As a result, in 1926, a few months before the enactment of the family code of that year, a special decree was adopted to revive adoption.⁵

Legitimacy of Children

In another major departure from tradition, the 1918 family code gave a child born out of wedlock the same legal status and rights as a child born

in wedlock.⁶ In Western countries at the time, an illegitimate child was in an inferior legal status regarding rights to inheritance and recognition as a child of the natural father. In England, under the common law, a child born out of wedlock enjoyed no rights deriving from the status of parent and child.⁷

In France, there had been movement, after the French Revolution, in the direction of removing the legal disability of children born out of wedlock. By a law of 1793, illegitimate children were granted the same rights of succession as legitimate children.⁸ However, this reform lasted only a few years. In the Civil Code of 1804, illegitimate children once again were deprived of the status of children for purposes of intestate succession.⁹ Deprivation of rights was particularly strong for children born of an adulterous relationship.¹⁰ Throughout the world, children born out of wedlock were in a precarious legal position. The legal disabilities of a child born out of wedlock affected the child, but they also impacted negatively on the mother, who was more likely to be the upbringer, but without a financial claim on the father for support.

The Soviet view was that a child should not be disadvantaged because parents were not married. Kollontai decried the sexual double standard that allowed men to have multiple partners and saw illegitimate children as the product of such liaisons. Referring to the law's treatment of these children, Kollontai said, "We pronounce the 'sentence of death' on the illegitimate 'children of love.'"¹¹

Parental Leave

Soviet legislation introduced the right of a woman worker to a compensated work leave before and after childbirth, with retention of employment. The idea of granting women such rights was hotly debated in Europe at the turn of the twentieth century. Social democrats promoted the issue as part of their agitation in favor of worker rights.¹²

Tsarist Russia adopted a law in 1912 providing for cash benefits to some women workers for maternity. At the Sixth All-Russian congress of the Russian Social Democratic Party, held in Prague, Lenin criticized the Russian law as inadequate. Lenin called for a comprehensive social insurance system to include old-age pensions to workers, and continuation of the full salary of a worker in case of accident, illness, or maternity.¹³ When a Soviet labor code was adopted in 1922, it granted maternity leave with full salary. For women employed in physical labor, the leave period was to be six weeks before, and six weeks after, childbirth.¹⁴

Along with communal child-care, which also came to be widely provided, parental leave allowed women to combine child-bearing with gainful employment. A woman could take time from work for childbirth and for a period of staying at home with the infant child and then return to work in the same status and with no loss of pay or benefits. These reforms not only allowed women to be employed but made women more competitive in the workplace, allowing them to progress through promotions more nearly on a par with men.

Abortion

The Marxist emphasis on the rights of women was reflected in Soviet policy on abortion. Here, too, that policy cast a serious challenge to the West. Marxist authors had not seriously discussed abortion. Until the nineteenth century, abortion was not generally outlawed. Only during the course of the nineteenth century did one jurisdiction after another prohibit abortion. By the turn of the twentieth century, abortion was almost universally prohibited by law. Typically, both the physician and the pregnant woman were deemed guilty of a criminal act. In tsarist Russia, a person performing an abortion was subject to a prison term up to six years, and a woman who permitted an abortion to be performed upon her could be jailed for five years.¹⁵

The rationale for criminalizing abortion was, in part, the physical risk to a woman on whom an abortion was performed and, in part, a moral concept that abortion was wrong. The American Medical Association in 1857 proposed a general prohibition against abortion, on the basis that the fetus was a live being.¹⁶

The Soviet Russian government repudiated this prohibition. It became the first government to repeal an abortion law. It took the position that abortion was lawful, so long as it was performed by a qualified practitioner in a safe manner. In 1920, the health and justice commissariats, by a joint decree, explained that “the legislation of all countries fights with this evil (abortion) through punishment both for the woman who has decided on abortion, and for the physician who performed it.” The decree said that “this method of struggle forced this operation into the underground and made the woman a victim of profit-oriented, untrained abortionists.”

The Soviet Russian government, said the decree, “through the strengthening of the socialist structure and propaganda against abortions among the masses of women workers it fights against this evil and, broadly putting into practice the principles of the protection of motherhood and youth, foresees the gradual disappearance of this phenomenon. But for now the moral remnants of the past and the severe economic conditions of the present still force some women to decide on this operation. The people’s commissariats of health and justice, to protect the health of the woman and the interests of the population from untrained and profit-oriented robbers, and finding the method of criminalization in this area to have failed to attain its goal, undertake a series of steps to prohibit the performance of abortion operations by anyone other than physicians, and by organizing the performance of this operation at no cost in Soviet hospitals.”¹⁷

The decree viewed abortion in a negative light but explained it in large part by the woman’s financial inability to raise the child that would be born. The commissariats thought that abortion would diminish as the economy improved. They viewed the woman who decides on an

abortion a potential victim of unqualified abortionists. They did not view abortion, if performed under safe circumstances, as a crime.

The 1922 Russian criminal code followed this approach, declaring abortion illegal only if performed in a hygienically unsafe manner.¹⁸ The 1926 criminal code took the same approach.¹⁹

Soviet jurists said that many instances of abortion occurred because the woman or the family was unable to support an additional child, or because a child would make it difficult for a woman to hold a job. Cramped housing conditions were another factor, they said. "All these conditions giving rise to abortion as a mass phenomenon, and falling most heavily on the working masses without wealth," said one Soviet jurist, M. Grodzinskii, "are the product of the capitalist system. Naturally, therefore, bourgeois legislation closes its eyes to the factors underlying abortion and combats it not by social reform but by criminal repression." He said that "only the class-based law of the bourgeoisie can with one hand allow an owner to kick into the street a family into which an "excess" child was born, and with the other hand send to prison a woman (and often her husband as well), who out of fear of losing her housing keeps a child from being born."

Grodzinskii also said that in bourgeois countries, a woman who conceived out of wedlock may decide on an abortion out of the shame connected with giving birth out of marriage, and concern about bearing a child who would bear the stigma of being illegitimate. He said that in bourgeois countries the well-to-do were able nonetheless to find physicians who performed quality abortions, so that the main impact of the prohibition was that the poor were unable to have the operation performed properly.²⁰

Another jurist, G. Meren, said that with the expected "growing economic well-being of the country, when the proletarian state will be able to fully carry out the principles of protection of motherhood and infancy, gradually the need for artificial interruption of pregnancy will disappear."²¹ In 1936, the Soviet government decided that the need had disappeared. Over much opposition, it outlawed abortion.²² The

rationale was that full employment had been achieved, so that women could provide for children they conceived. The law outlawing abortion also increased material support for children in need.²³ Experience under the 1936 law was not positive, however, and in 1955, abortion was legalized once again.²⁴ Despite the ambivalence reflected in these later changes, the Soviet government was the first to reject the prohibition against abortion, a move which, as will be seen, had a significant impact outside Russia.

Crime without Punishment

CRIME MAY SEEM A TOPIC UNRELATED TO THE ECONOMIC philosophy behind the Bolsheviks' thinking, but in their analysis, it, like other aspects of social life, was linked to the economy. In Western philosophizing about crime, focus fell on the purpose of punishment: whether penalties can effectively deter crime and whether it is justifiable to exact retribution on a wrongdoer to satisfy a social urge to make things right. In short, the Western focus was on the system of criminal justice. It was assumed that the offender acted out of free will and deserved punishment of some kind. The rationale for punishing was "the moral responsibility of the delinquent," and the punishment was conceived as retribution.¹

To Marxists, the Western focus was misplaced. To stop crime, focus not on the criminal justice system, but on the society. The Soviet government viewed crime not as acts committed because of the moral imperfections of the individual, but because of imperfections in society. The individual was inherently good, but committed antisocial acts because society was structured in such a way that it did not satisfy the needs of all its members.

It was not the criminal who was responsible for crime, but the society. Reform not the criminal, but the social order. A cartoon in a popular magazine in the United States some years ago gave humorous depiction to the philosophy of crime the Marxists devised. After a jury returned a verdict of guilty on a felony charge, the judge pronounced sentence.

“I find that society is responsible for this crime,” said the judge, “and I hereby sentence the jury to ten years in the state penitentiary.”

Engels expressed this idea in a letter to the German social democrat August Bebel, when he wrote, “How comical and despicable are these bourgeois, who try through moral teaching and criminal punishments to eliminate the inevitable consequences of their own activity.”²

Soviet jurists followed Engels: “We know that the prerequisite of the state, law, and crime is economic inequality, which arose because of the division of society into classes. Consequently, with the disappearance of the class system and the subsequent disappearance of inequality, all these, including crime, will disappear.”³ Where Western governments had regarded crime as an inevitable phenomenon, the Soviet theory was that it could be conquered.

Marxist analysis of crime derived from the experience of the industrial revolution. With large numbers of newly impoverished, rates of acquisitive crime soared. In England, which experienced the industrial revolution first, larceny convictions rose fivefold in the first three decades of the nineteenth century. In France, which industrialized a bit later, larceny convictions tripled between 1825 and 1842.⁴

These were precisely the years in which the industrial revolution was having an impact on the labor scene. Rural folk flocked into towns in search of industry-related employment. The social dislocation that accompanied this migration, the breakup of tight-knit communities, and the poverty the migrants faced in cities, provided the context for urban crime.

Friedrich Engels commented on crime in England during the early years of the nineteenth century: “Want leaves the workingman the choice between starving slowly, killing himself speedily, or taking what he needs where he finds it – in plain English, stealing. And there is no cause for surprise that most of them prefer stealing to starvation and suicide.”⁵

The response of European governments was to make punishments harsher. Capital punishment was extended to more crimes, terms of

imprisonment were lengthened, and whipping and other corporal punishments were used more.⁶ The thrust of criminal policy was to punish the poor. A class element entered the justice system. In a case of the rape of a young girl in France in 1811, the judge explained that he opted for the minimum sentence because the victim was a farm servant. "If it were a girl better born," he said, "I would vote for the maximum." When challenged for his view, the judge explained, "I consider it important to make a distinction between the well born and the common people."⁷ Prisons, filled with the poor, were filthy and badly maintained. Prisoners received scant nourishment.⁸

Social reformers despaired because they saw that the poor could not be reformed by a prison term, given that after release they would return to their previous situation of desperation.⁹ A Dutch criminologist studied crime trends in Europe over the nineteenth century. He found that during economic downturns, crime rates rose, and during times of prosperity, they declined.¹⁰

Reducing Punishments

In the West, the view of Soviet crime policy is based on a harsher approach that took hold in the 1930s. But in the 1920s, serious effort was made to implement the Marxist idea that crime could be solved by reforming society and, therefore, that one should not be overly retributive or harsh in dealing with wrongdoers. Ways should be sought to correct their behavior and to reintegrate them into society. To be sure, the Marxist idea about crime created a dilemma. Because society could not immediately be brought to the perfection that would eliminate crime, wrongdoers would need to be punished. But punishment was viewed as temporary policy.

Terms of imprisonment were reduced, and rehabilitation was stressed in penal institutions. "Prisons" were replaced by "corrective

Crime without Punishment

labor” camps, where inmates would learn work skills, paving the way for a useful life upon release.¹¹ Murder, committed without one of specified aggravating circumstances, was to be punished by imprisonment of “not less than three years,” without a specified maximum. Manslaughter brought a maximum penalty of three years. Mercy killing was not to be punished at all.¹²

In 1924, basic postulates on penal law, called Fundamental Principles of Criminal Law, were adopted for the newly formed Union of Soviet Socialist Republics. These postulates were designed to express the core concepts that would be reflected in the penal code of Russia and the other republics that made up the Union. The Fundamental Principles reflected a nonpunitive approach. They provided that when a crime was committed by inadvertence, the court should set a penalty even lower than the statutory minimum.¹³ This was said to allow for reduction of punishment when a worker committed a crime as a result of the influences of the previous social order.¹⁴ The 1926 Russian penal code referred to punishment as “measures of social defense” and viewed its purpose as being “to orient those who have committed criminal acts to the conditions of social interaction in the state of the workers.”¹⁵ Whereas Western law punished violators of penal laws as miscreants, Soviet law would educate them to work to build a society in which they could live well by legitimate means.

Decriminalization of Sodomy

Beyond reducing punishments, Soviet penal law drafters examined existing prohibitions to determine whether they were warranted. As seen in Chapter 4, they eliminated the ban on abortion. They also ended criminal liability for sexual relations between adult males.

Elimination of a sodomy statute was a major change. In Europe, laws on sodomy in a few countries, notably in France, had been repealed,

but sodomy remained an offense across the continent.¹⁶ Under tsarist law, same-sex sexual activity was prohibited as an “unnatural vice” punishable by five years’ incarceration.¹⁷

Marxist writers had not applied their analysis of class society and capitalism to the question of sexual orientation. In discussing ancient Greek society, Engels referred to what he called “the abominable practice of sodomy.”¹⁸ Despite the absence of analysis, the social democrats in Germany took up decriminalization of sodomy as a political issue. In the 1860s, a German lawyer was convicted under Germany’s sodomy law. The social democrat leader Ferdinand Lassalle criticized the government’s action, saying that “sexual activity is a matter of taste and ought to be left up to each person, so long as he doesn’t encroach upon someone else’s interests.”¹⁹ When Oscar Wilde was convicted of “gross indecency” in London in 1895, the German social democrat Edward Bernstein wrote in a social democratic journal in Wilde’s defense. Bernstein objected to the use of the term “unnatural” to describe homosexual acts, a term appearing in Germany’s sodomy law.²⁰ Bernstein pointed to the existence of homosexuality in ancient times as an indication that homosexual activity was not “unnatural.” Using a materialist analysis, Bernstein said that “moral attitudes are historical phenomena,” meaning that they change as society develops.²¹

Efforts were made in Germany to repeal the sodomy statute. August Bebel, as leader of the social democrats, argued for repeal on the floor of the Reichstag in 1898.²² The issue surfaced again in the Reichstag in 1905, and again the social democrats led the repeal forces.²³

Homosexuality was not analyzed in the writings of the Bolsheviks, but the 1922 criminal code contained no article on sodomy; hence it decriminalized it.²⁴ Soviet Russia became “the most significant power since revolutionary France to decriminalize male same-sex love.”²⁵

The abolition of sodomy legislation reflected the ascent of liberal notions in regard to private life, in keeping with the position of the German social democrats. Dr. Grigorii Batkis, a section chief at the Moscow Institute of Social Hygiene,²⁶ wrote a tract in 1923 titled

“Sexual Revolution in Russia,” in which he explained the Soviet approach on matters sexual, including the decriminalization of sodomy: “Concerning homosexuality, sodomy, and various other forms of sexual gratification, which are set down in European legislation as offenses against public morality – Soviet legislation treats these exactly the same as so-called ‘natural’ intercourse. All forms of sexual intercourse are private matters. Only when there is use of force or duress, as in general when there is an injury or encroachment upon the rights of another person, is there a question of criminal prosecution.”²⁷

When a new criminal code was adopted in 1926, again no provision on sodomy appeared. Decriminalization did not necessarily bespeak approbation, however. The *Large Soviet Encyclopedia*, published in 1930, analyzed homosexuality in negative terms, as a pathology. That analysis differed from the prevailing moralistic analysis of homosexuality. Homosexuals, according to the *Encyclopedia*, were not to be viewed as being at fault for their sexual activity, hence not deserving of criminal punishment. “Soviet legislation,” recited the *Encyclopedia*, “does not know so called crimes against morality. Our legislation, based on the principle of defense of society, provides for punishment only in those cases in which the object of sexual interest of homosexuals is youth or juveniles.”²⁸

The approach to homosexuality reflected in the Soviet decriminalization has been described as “scientifically informed toleration.”²⁹ Decriminalization was called for not by any homosexual political movement, but by liberally minded jurists. The *Encyclopedia* criticized the approach in tsarist legislation as that of “legislation directed against biological inclination,” calling it “absurd,” and as “giving no real benefit.” Even worse, said the *Encyclopedia*, such legislation “acts very negatively on the mind of homosexuals.”

Referring to sodomy legislation in Europe, the *Encyclopedia* called it “hypocritical.” Soviet society, by contrast, it said, does not place blame on the homosexual. Instead, it “creates all necessary conditions so that a homosexual’s skirmishes in life might be as painless as possible,

and that the alienation they experience might be resolved in the new collective.”³⁰

Prostitution and Its Origin

One of the most visible innovations in criminal law policy in Soviet Russia came with regard to prostitution, in which the Soviets issued a sharp challenge to the West. In the West, prostitution had been viewed as an unavoidable social evil. The most government could do was to ameliorate its negative consequences to the extent possible. The Soviet government posited the possibility of solving it, through economic policy.

Marxists analyzed prostitution in the context of the industrial revolution, which saw a major increase in prostitution, with prostitutes drawn from the laboring classes.³¹ Prostitution impressed itself on Marxist writers as one of the most blatant abuses of capitalism. Workers were exploited not only for their labor, but for their bodies.

Prostitution was seen as a reflection of male dominance. “Marriage,” wrote Bebel, “presents one side of the sexual life of the capitalist or bourgeois world; prostitution presents the other. Marriage is the obverse, prostitution the reverse of the medal. If men find no satisfaction in wedlock, then they usually seek the same in prostitution.”³²

The Marxist critique included one more element, connected to gender bias. Because of the higher status that capitalist society accorded men, under capitalism the woman prostitute was viewed more negatively than her male client: “What for the woman is a crime entailing grave legal and social consequences is considered honorable in a man or, at the worst, a slight moral blemish which he cheerfully bears.”³³

In the socialized economy that would follow capitalism, the means of production would no longer be passed as private property and, therefore, it would not be necessary to ensure that a woman’s offspring were

her husband's. Thus, there would be no material basis for the double standard in sexual morality. Women, moreover, would achieve economic equality with men and would escape the situation of economic necessity that, under capitalism, led to prostitution.

The Dutch Marxist criminologist Willem Bonger studied prostitution in Europe and concluded that "almost all prostitutes spring from the classes without fortune, and the great majority of them have been at first working-women or domestics." Bonger said that "if such women, for any reason whatever, cannot find work, they are thrown into poverty. As this happens constantly in society, poor women find themselves forced into prostitution."³⁴

Bonger said "the wages paid to women are often so small that it is impossible for them to pay even their necessary expenses," and thus they were "obliged to find some supplementary source of income." Bonger found that the prostitution picture was more or less the same in "all the countries where capitalism reigns." Charting the incidence of prostitution over time, Bonger showed that it increased during economic downswings and decreased during upswings.³⁵ Other analysts noted that young women in factory work who became unemployed during economic downturns were forced into prostitution.³⁶

The correlation between prostitution and the poverty associated with the industrial revolution was widely noted.³⁷ "The most striking fact in connection with the source of supply is its practically total derivation from the lower working-classes."³⁸ "[T]he huge proletariat is the reservoir from which victims can be readily drawn."³⁹

Lenin penned a 1913 newspaper article about an international conference held in London on prostitution. "What means of struggle were proposed by the elegant bourgeois delegates to the congress? Mainly two methods – religion and police." Lenin reported that "[w]hen the Austrian delegate Gärtner tried to raise the question of the social causes of prostitution, of the need and poverty experienced by working-class families, of the exploitation of child labour, of unbearable housing

conditions, etc., he was forced to silence by hostile shouts.” Lenin termed the congress’s refusal to address the social causes while purporting to be against prostitution as “disgusting bourgeois hypocrisy.”⁴⁰

In another 1913 article, “Capitalism and Female Labour,” Lenin found prostitution an inevitable feature of slaveholding, feudal, and capitalist societies, because in each instance the masters were able to compel women of the underclass into sexual relations because of their economic hold over them.⁴¹

Two leading Bolsheviks, Nikolai Bukharin and Evgenii Preobrazhenskii, characterized prostitution as a product of low wages for women workers under capitalism: “even if she has work, the wages are so low that she may be compelled to supplement her earnings by the sale of her body. After a time, the new trade becomes habitual. Thus arises the caste of professional prostitutes.”⁴² Prostitutes, in the Marxist view, were victims of capitalism.⁴³

In tsarist Russia, the Bolsheviks found a situation that seemed to confirm their analysis. Prostitution was widespread.⁴⁴ A system of registration of prostitutes was used in Russia, and shortly before World War I, 40,000 women were registered in St. Petersburg⁴⁵ and 20,000 in Moscow.⁴⁶ Many more practiced prostitution without registering.⁴⁷ Kollontai said that “when a woman’s wages are insufficient to keep her alive, the sale of favours seems a possible subsidiary occupation.” Like Bonger, Kollontai said that prostitution increased in times of economic crisis and high unemployment.⁴⁸

The “main motive” impelling women in tsarist Russia into prostitution, was, in the opinion of one analyst, “economic hardship or the fear of it.”⁴⁹ “The hard life and extreme poverty of the Russian peasantry, struggling under heavy taxation,” wrote another analyst, “drove thousands of girls and women into the towns, to work in factories and as domestic servants, in the hope of earning more money to help out at home.”⁵⁰ Work in a town typically brought small reward, as women’s wages in industry were far below men’s,⁵¹ and many women worked as domestics, receiving extremely low pay. “What wonder, then, that

many women of the Russian peasantry, even up to the time of the Revolution of 1917, accepted prostitution as a means of livelihood.”⁵²

Eliminating Prostitution

In 1918, the Soviet government, invoking the Marxist analysis of prostitution, declared the possibility of eradicating prostitution. The aim was stated at a 1918 All-Russian Congress of Women.⁵³ The eradication would come about, the government predicted, not through legislative prohibition or regulatory schemes, but through the elimination of capitalist wage-employment, and an equalization of the status of the sexes.

Alexandra Kollontai, as People’s Commissar of Social Welfare in the Russian Soviet government, declared that with the elimination of private property to the means of production, prostitution would disappear.⁵⁴ “The workers’ revolution in Russia has shattered the basis of capitalism and has struck a blow at the former dependence of women upon men. . . . A woman provides for herself not by marriage but by the part she plays in production.”⁵⁵

As of 1917, most of Europe, including Russia, dealt with prostitution by legalizing and regulating it. The goal was to reduce venereal disease. Prostitutes were required to register for periodic medical examinations.⁵⁶ Prostitution outside the regulatory scheme was made criminal. The regulatory scheme had the effect of branding the woman. Bebel said that regulation made it “extremely difficult, even impossible, for the prostitute ever again to return to a decent trade.”⁵⁷

In Russia as elsewhere, however, the regulatory system failed to reduce venereal disease. Even if examinations were conducted, prostitutes contracted and transmitted disease between examinations.⁵⁸ As a result, Russian medical societies had called for the closing of regulated brothels.⁵⁹

The Soviet government abolished regulation. It shut down brothels and made it a crime to run one, or to procure a woman for

prostitution.⁶⁰ The rationale was that organizers of prostitution exploited the women. Nikolai Semashko, People's Commissar of Health, said that "the struggle against prostitution must not be turned into a struggle against prostitutes."⁶¹

Not all prostitutes were pleased at being viewed as victims, if it meant no brothels. A Russian prostitute identified as Tania was quoted as objecting that no alternative employment was available. In a letter to a newspaper, Tania complained that the government, by closing brothels, made it difficult for prostitutes to earn a living.⁶²

The government set up a Central Council to Combat Prostitution, with local branches in major towns and cities. Commissar Semashko asked the antiprostitution councils to educate the public, through youth groups, army units, and schools, so that it would understand that prostitution was "a shame in the workers' republic, and the dangers connected with it."⁶³ "[P]rostitution will begin to disappear if, while we struggle to consolidate our economic front, while we struggle to liquidate unemployment, we also enter upon a struggle to impress upon the minds of the workers all the inadequacy, all the shame of purchasing a human body."⁶⁴

To discourage men from frequenting prostitutes, police informed the employers of clients, and clients' names were published in local newspapers.⁶⁵ Names were posted on factory bulletin boards.⁶⁶ The Communist Party expelled members who patronized a prostitute.⁶⁷

As a preventive measure, the councils to combat prostitution provided dormitory housing for unemployed women and found temporary housing for rural women coming into cities.⁶⁸ The councils helped women find jobs.⁶⁹ They sought special consideration for women in cases of factory layoffs, especially for single women and pregnant women with small children.⁷⁰

During the civil war that continued from 1918 to 1921, the government required compulsory labor from all able-bodied adults, which included prostitutes.⁷¹ Female unemployment and, with it, the number of prostitutes, dropped sharply as the government organized

production of war matériel.⁷² Those unwilling to work, including prostitutes, were sent to labor camps.⁷³

After the civil war, labor mobilization ended and prostitution levels rose.⁷⁴ Famine marked the period, and it contributed to prostitution. "Soviet ladies," reported Kollontai, "exchange their favours for a pair of high-heeled boots; working women and mothers of families sell their favours for flour. Peasant women sleep with the heads of the anti-profitier detachments in the hope of saving their hoarded food, and office workers sleep with their bosses in return for rations, shoes and in the hope of promotion."⁷⁵

Unemployment and, with it, the levels of prostitution, were high through the 1920s.⁷⁶ Young peasant women moved to towns looking for jobs that did not exist.⁷⁷ "They were uneducated and without a trade," wrote one analyst, and prostitution offered "a temporary livelihood."⁷⁸

The economic equality that was to eliminate prostitution had yet to be realized. "[T]he economic structure is far from being completely rearranged in the new way, and communism is still a long way off," wrote Kollontai. "In this transitional period prostitution naturally enough keeps a strong hold. . . . Homelessness, neglect, bad housing conditions, loneliness and low wages for women are still with us. Our productive apparatus is still in a state of collapse . . . These and other economic and social conditions lead women to prostitute their bodies."⁷⁹

Venereal disease clinics were set up to treat prostitutes free of charge.⁸⁰ The government opened "prophylactoria," where prostitutes could learn a trade or basic reading skills.⁸¹ "Women picked up by inspectors at railroad stations or other public places are taken not to jail but to a prophylactorium where they are taught a useful trade with a view to removing the economic cause which is held to be the chief one in this practice."⁸²

Prophylactoria in Moscow ran textile shops, in which the women received the prevailing wage.⁸³ Many stayed long enough to learn a skill.⁸⁴ Officials reported success in finding them employment.⁸⁵

When the Soviet government initiated an industrialization program in 1928 and began state-funded construction work, employment levels rose. This turn-around in employment brought a reduction in prostitution.⁸⁶ In the 1930s, prophylactoria were phased out, as the reduced numbers of prostitutes no longer warranted their use.⁸⁷

Soviet criminal law eventually shifted from a view of criminals as victims of the social order to one of criminals as persons responsible for their own actions.⁸⁸ In 1934, sodomy was recriminalized.⁸⁹ Even prostitutes were no longer viewed as victims, because they were seen to have job alternatives.⁹⁰ Nonetheless, the Soviet government had set a marker on crime policy; it had challenged the philosophical foundation of criminal law as it operated in the West.

A Call to “Struggling People”

THE SOVIETS HAD NEW IDEAS NOT ONLY ON DOMESTIC policy but on the world at large. For the West, one of the most troubling Soviet notions related to colonialism. To the colonial powers, colonialism was legitimate, rationalized by the British as a fulfillment of the “white man’s burden,” and by the French as a “civilizing mission.”

The Soviets called colonialism enslavement. The European bourgeoisie had exerted its control over Third World territories by force, and one element in the move away from capitalism to socialism would be a revolt by the peoples of these territories.¹ The Soviets called for the self-determination of all peoples. One of the first Soviet decrees proposed “to all struggling people and their governments to begin immediate negotiations for a just democratic world.”²

That was a virtual call to arms to the peoples of Africa and Asia who had been colonized by Europe. The world economy was based on the cheap labor and raw materials that Europe extracted to fuel its industrial machine.

In the nineteenth century, the European powers had taken control of most of Africa. King Leopold of Belgium got the huge central area and made it into a country that was called the Belgian Congo. The Germans and Portuguese took large chunks of central and southern

Africa, and the French most of west Africa. The British took territory all over the continent.³

By a treaty concluded in Berlin in 1885, the European powers coordinated their economic endeavors in Africa and sought to give an air of legality to their control of territory there.⁴

Making the challenge more real, the Soviet government seemed to be following the self-determination idea within its own borders. The empire of the tsars extended from the Pacific coast of Siberia into central Europe, where it included Finland and Poland. In the south, it encompassed sectors of the Middle East around the Caspian Sea. The tsars' territories included the home areas of more than 100 nationality groups. Resentment against Russian control was strong. The Soviet government decreed that all the nationalities had a right to decide their own political direction.⁵

For France and Great Britain, the call could not have come at a worse time. They had just defeated Germany and the Ottoman Empire and stripped them of their territories in Africa and the Middle East. During World War I, they had secretly agreed to divide up the Ottoman territories. France would get Syria and Lebanon, while Britain would get Iraq. Palestine, they would share.⁶

To make matters worse, the Soviet call for an end to colonialism coincided with a call by U.S. President Woodrow Wilson for self-determination of peoples. Wilson proclaimed that this was one of the principles for which the United States entered the Great War on the side of France and Britain.

The Soviet government also condemned other forms of intervention by the European powers. It "rejected in all shapes and forms any attempts by a state to intervene in the internal affairs of another."⁷ In the early twentieth century, "gunboat diplomacy" prevailed, with countries like Great Britain and the United States from time to time intruding militarily in Latin America or Asia to enforce payment of debts. The United States operated governments in Latin America, on the rationale that it needed to ensure they would pay their

debts. The Soviet criticism of intervention paralleled the criticism of colonialism.

Secret Treaties

As one of their planks, the Bolsheviks said that treaties should be made only publicly. The major powers should not be allowed to conclude secret agreements that might affect nations and peoples negatively. The contents of a 1915 secret treaty between Russia and Italy had been disclosed in the press. Lenin railed against the treaty, because it promised Italy a generous territorial settlement after the war, including the Tyrol, which was inhabited by Germans, and Dalmatia, inhabited by Croats and Serbs.⁸

The treaty, along with other secret agreements among the Allies, was revealed by Leon Trotsky in November 1917. Making the most of the disclosure, Trotsky said that the secret treaties revealed the “dark plans of conquest” of the Allies. The Soviet government, Trotsky said, would abolish “secret diplomacy and its intrigues, codes, and lies.” Instead, the Soviet government would bring peace and satisfy the demands of the workers. Wrote Trotsky, “We want the rule of capital to be overthrown as soon as possible.”⁹

The Soviet criticism ran not only to those secret treaties concluded during the World War I period, but to secret treaties in general. Lenin said that the publishing of secret treaties would show the Western powers to be robbers. Many of the secret treaties were between major powers, providing for how they would deal with territories outside Europe.

The new Soviet government published more than 100 secret treaties it found in tsarist government archives.¹⁰ Some of the treaties were published in newspapers in the West.¹¹

The Soviet challenge to secret diplomacy threatened the way European powers disposed of territory, and, more generally, how they

ordered the affairs not only of Europe but of much of the rest of the world.

Colonialism and Imperialism

The Bolsheviks' diatribe against secret diplomacy was only one element in a broader critique. The Soviet analysis of colonialism and of major-power control of the less developed world grew out of the Marxist analysis of capitalism. Mass goods production led to concentration of production. The cartels then extended their reach worldwide. They needed raw materials to feed their assembly lines. Once they produced goods, as they did in great quantity, they needed to market them around the world.

Lenin had developed this argument in his tract, *Imperialism, the Highest Stage of Capitalism*. At a certain stage, the capitalists needed to export not only their goods, but their capital to territories where they could reap higher profit for their investment. Colonialism provided the answer because, by taking control of territory, they could use resources and labor at will. "The colonial policy of the capitalist countries," Lenin wrote, "has completed the seizure of the unoccupied territories on our planet." Lenin said, "we are living in a peculiar epoch of world colonial policy, which is most closely connected with the 'latest stage in the development of capitalism,' with finance capital."¹²

"Finance capital," in Lenin's eyes, needed territory, where minerals might be discovered, as might new uses found for land previously of no value. "Hence, the inevitable striving of finance capital to enlarge its spheres of influence and even its actual territory."¹³

Lenin was writing in 1916, as war raged in Europe, and millions of Europe's young men were dying in gas attacks and trench warfare. This horror Lenin attributed to the economic system that prevailed in the countries at war with each other. Britain and Germany were fighting over markets and territories, with consequences devastating to

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their own populations and to those of other countries. The only way to stop the imperialism that manifested itself in the Great War was to overthrow capitalism.

The Regime of Capitulations

One aspect of control by the major powers of territory in the less developed world was the regime of capitulations. Western businesses and their personnel operating in the Near East and Asia were reluctant to subject themselves to local courts. They were able to convince the governments of these countries to accept a system whereby all their personal and business matters, even crimes they might commit, would be handled by representatives of the European country’s government.

This practice was referred to either as extraterritoriality, or as a regime of “capitulations,” the latter term coming from the fact that treaties with Turkey providing for this regime were divided into “chapters,” which was rendered in the Latin *capitula*. The regime precluded the jurisdiction of the local courts over foreign nationals, most importantly business people. Instead, consular officers of the home state, typically a European state, would handle civil or criminal matters involving their nationals. The European states were concerned that their nationals would not receive fair treatment in local courts.

By the late nineteenth century, rising nationalism in the Third World led to objection to the regime of capitulations. The European consulates had expanded upon their rights, sometimes setting up commercial undertakings outside local regulation. In addition, the consuls acting as judges were at times partial to their own nationals to the detriment of locals. Turkey tried unsuccessfully to convince the Western powers to renounce extraterritorial rights in Turkey. In China, the “Boxer rebellion” of 1900 was prompted by popular discontent over the capitulations regime as it functioned in the major port cities of China. Because of this strong nationalist pressure coming from the affected

nations, European governments were beginning to give up extraterritorial rights. However, the institution was far from extinct.¹⁴ In Turkey, the system, as it concerned the Allied countries, broke down during the World War, but when the Allies occupied Turkey at the end of the war, they re-established it.¹⁵

Extraterritoriality was high on the list of the Bolsheviks' grievances with the existing system of international law.¹⁶ "From the first days of the Great October socialist revolution, the Soviet state renounced the system of capitulations (including consular jurisdiction)."¹⁷ Tsarist Russia had been one of the powers that had enjoyed territorial rights, namely, in Persia, China, Afghanistan, and Turkey. The Soviet government issued a unilateral declaration in 1919, renouncing those rights, and took the occasion to denounce the capitulatory system.¹⁸

The Soviet government attacked the practice as an infringement on sovereignty and free national development.¹⁹ That was certainly how the states subject to extraterritoriality viewed the situation. In a note it sent to Western powers at the start of the World War, in which it attempted to end capitulations unilaterally, the Turkish government charged that the system was "in complete opposition to the juridical rules of the century and to the principle of national sovereignty."²⁰

The Withering Away of Law

THE LEADERS OF THE GOVERNMENT THAT EMERGED FROM the Bolshevik Revolution of 1917 professed principles differing sharply from those of the tsarist monarchy. More broadly, they condemned the “rule of law” of bourgeois countries as providing a false equality. Their rationale was that the rights that in theory applied to all could be used effectively only by those with wealth. “Paper laws are of no use to the working class unless the possibility of their realization exists,” wrote Nikolai Bukharin, a leading Bolshevik. “The workers wish to publish a newspaper, and they have the legal right to do so. But to exercise this right they need money, paper, offices, a printing press, etc. All these things are in the hands of the capitalists.”

Bukharin said that under the bourgeois “rule of law” concept, “the employer offers work; the worker is free to accept or refuse.” This reflects freedom of contract, founded on a theory of the equal status of all parties, Bukharin said, but “the master is rich and well fed; the worker is poor and hungry. He must work or starve. Is this equality?”¹ The rule of law in bourgeois countries, said Evgenii Pashukanis, a leading Soviet legal theorist, was only a mask, maintained so long as the state held firm control. If that control began to slip away, then force was substituted for law.²

On the basis of this critique, Soviet legislation made major changes in the law. The tsarist courts were abolished, as were the systems of court investigators, procurators, and the private bar.³ Tsarist law was

repealed.⁴ All the prior courts and all the prior statutory law were eliminated. New courts of general jurisdiction were established.⁵ Juries were replaced by a mixed lay–professional panel, a system in evidence elsewhere in Europe at that period.⁶ So-called revolutionary tribunals were set up,⁷ to “deal speedily and mercilessly with the enemies of the proletarian revolution.”⁸ These special tribunals were eliminated in 1922, when a unitary court system was established, based on a people’s court at the lowest territorial level, with another court at the province level, and a supreme court for the Russian republic above them.⁹

Bukharin described the new courts as reversing class predominance: “In the old law-courts, the class minority of exploiters passed judgment upon the working majority. The law-courts of the proletarian dictatorship are places where the working majority passes judgment upon the exploiting minority. They are specially constructed for this purpose. The judges are elected by the workers alone. . . . For the exploiters the only right that remains is the right of being judged.”¹⁰ Soviet politicians criticized judges who, by following the law, decided cases in favor of members of the bourgeoisie.¹¹

This period was called by the Bolsheviks the “dictatorship of the proletariat,” meaning that the bourgeoisie was being deprived of its former predominance by being subjected to a legal order that favored the formerly dispossessed classes.

Law as Bourgeois

Soviet legal theorists questioned the need for law. They stressed instead the need to perfect society, arguing that this would render law unnecessary.¹² Law was to die out under communism.¹³ The concept of dictatorship of the proletariat – the idea that the Soviet government represented the working class in its effort to wrest itself from the domination of the bourgeoisie – was widely interpreted as freeing the government of the need to follow rules of law, not only in its treatment of

the bourgeoisie, but in its style of rule in general.¹⁴ In addition, the idea that law in bourgeois countries subjugated the working class colored the view of law in general, leading many Soviet lawyers to view law as, itself, a bourgeois phenomenon.¹⁵ Pashukanis said that law had emerged in the context of goods exchange in the market place, and that it was therefore incapable of being infused with a socialist content; instead, it would disappear as state planning replaced the market economy.¹⁶ These notions about law fueled existing negative attitudes about law long held by the Russian intelligentsia.¹⁷

Law in bourgeois countries was viewed as a mechanism whereby the state arbitrated among its citizens, providing rules by which they engaged in economic competition with each other.¹⁸ The socialist state was to have a different function. It would organize the economic life of the society in order to promote economic development, and to prevent the exploitation of some citizens by others.

That task would require a strong executive branch of government, able to direct social forces in desired directions. "The temple of bourgeois authority is legislation," explained A. G. Goikhbarg, a Soviet specialist in property law, "and its fetish is the law; the temple of the socialist world system is administration and its divine service is work. It is by no accident that the political ideals of the bourgeoisie are embodied in parliamentarianism and the *Rechtsstaat*, whereas, the socialist community is, in its very nature, primarily a community of administration."¹⁹

Law was the ideology of the bourgeois state, the instrument by which it protected private property. Therefore, if the Soviet government were to establish its own administration over the economy, law had to be eliminated.²⁰ "Law is the sanctuary of the exploiting classes," wrote Goikhbarg.²¹ Others thought Goikhbarg extreme. The need, they said, was to eliminate the bourgeois features of law, those features that allowed exploitation, but not to eliminate all law, which, it was said, was necessary in any society based on commodity production.²²

As the Soviet economy was industrialized in the 1930s, law did not disappear. The Soviet government undertook a major restructuring of

the country's economy and viewed law as a mechanism to ensure compliance with its economic directives. Law and legal process also came to be seen as a mechanism whereby the public could be educated to the socialist way of life. Law was not to be "deified," said M. Maryasin, a Soviet theorist, "nevertheless, we know how to force observance of our laws very well." Soviet laws, he said, "remain in existence only as long as they correspond to our vital interests, as long as they are conducive to the development of forces of production, to the construction of socialism."²³

The executive branch of government was insulated from interference by courts as it strove to remold the society. Whereas this feature of Soviet law distinguished it from the legal systems elsewhere in Europe, it represented a continuation of the tsarist pattern of a strong executive. This insulation facilitated the use of law by the executive for purposes of political repression.²⁴ Political opponents were tried and convicted on the basis of dubious confessions and testimony. The People's Commissariat of Internal Affairs was given the power, without review by any court, to send "socially dangerous" persons to terms in labor colonies.²⁵ The board was to state its reasons for incarcerating a person, and a procurator was to be present and to have the right to protest a decision of the board to the Presidium of the Central Executive Committee.²⁶

Utilizing this law, the Commissariat sent many political opponents, often for quite minor acts, to labor colonies without a public trial or an opportunity to present a defense.²⁷ A new procedure was instituted in cases of accusation of terrorism that called for trials without the participation of counsel, no right to appeal, and, if the death penalty were imposed, immediate execution of the person convicted.²⁸

Society would be improved by governmental programs. Legal rights were an obstacle to those programs, because the bourgeoisie insisted on its property rights over and against the social efforts of the government.

One way in which the conflict between collective and private interests played itself out was in a rejection of the concept of the presumption of innocence in criminal law. Working from the doctrine of dictatorship

of the proletariat, jurists viewed the presumption of innocence as weighing too strongly in favor of the accused. Thus, V. S. Tadevosian argued that by “placing on the shoulders of the state . . . the burden of proving the crime, freeing the accused of any obligations, proposing to construe any doubt to the benefit of the accused and to convict no one until the crime is proved like two times two equals four,” proponents of the presumption of innocence “eloquently defend the freedom and inviolability of the individual” but downplay “the interests of the state and society.”²⁹

Perhaps the most fundamental challenge that Soviet law issued to the West was the assertion that law need not be the basis for ordering society. The “administration of things” was to replace the rule of “man by man.” Formal processes would lose their significance as a perfectly ordered society functioned smoothly without them. Crime would disappear as the need to harm others became a thing of the past. Goods would be distributed through social mechanisms that did not involve legal formalities. The entire enterprise of the law would lose its role in society. Law would not have to be abolished. It would simply cease to function for lack of a need.

The benefits of the Soviet approach would be understood elsewhere, and other societies would follow a similar path. This was the gist of Nikita Khrushchev’s widely misunderstood dictum, “We will bury you.” His statement was portrayed as a threat to annihilate the West with nuclear weapons. What he actually meant was that the existing order in the West would approximate what was being done in the USSR, and that the Soviet-type social order would thus outlive the West’s social order.³⁰

Russia’s Past

For all the innovation, the legal system in the Soviet Union remained within the Romanist tradition that the Soviet government inherited

from the tsars. Soviet codes remained in the main similar to those of other European countries, even after the economy was centralized in the 1930s and new rules were devised for contractual relations between state-owned companies. This aspect of Soviet law may have made it an even more potent challenge to European law. Soviet law was part of European law but was pointing it in uncharted directions.

The procedure system for civil and criminal cases continued to be the mixed inquisitorial–adversarial system that emerged in Europe in the nineteenth century. Crime investigation continued to be conducted in the European style, by a law-trained person who prepared a detailed, written dossier for the prosecuting attorney and the trial court.³¹

When Soviet drafters set about writing civil and criminal codes in the 1920s, they did not discard prior law. They had been schooled in the law of tsarist Russia. They drew upon pre-Revolution scholarly work – a draft criminal code of 1903 and a draft civil code of 1913.

In the 1930s, when the Soviet state built up a large bureaucracy to administer economic and other programs, it resorted to law to make the system work. Law was not withering away, but increasing. This development forced Soviet jurists to explain why law, which was supposed to disappear when class differences faded away, was a prominent part of the Soviet scene.

Soviet jurists argued that their law was different, because it did not function in the context of a free market. “Soviet socialist law is not a further development of bourgeois law,” wrote M. S. Strogovich. “It is a new type of law, created as a result of the victory of the socialist revolution of the proletariat. The Great October Socialist Revolution eliminated the bourgeois-landowner state apparatus and abolished the old tsarist law.” Strogovich continued, “Having abolished the old law, the proletariat created a new, Soviet, socialist law. When in the USSR exploiting classes were eliminated and a socialist society was built, Soviet socialist law became the expression of the will of the entire Soviet people that had achieved the construction of socialism and that was carrying out the gradual transition to a communist society.”³²

A Society without Law

The withering away of law was relegated to a future date. Yet the concept remained as a major challenge to the West. Conflict in society should be regulated not by rules and courts but by arranging affairs in such a way that conflict would be minimized. Individuals would live at an acceptable level because of better organization of society, and they would have no need to resort to the coercion of law. A citizen of this kind of society would be altruistic and helpful to others.

In an essay titled “The Withering Away of Law,” one early Soviet jurist explained that without social classes, there would be no need for law: “with the transfer of all means of production to the hands of society, the bourgeois class, qua class, will begin to disappear. Also, its resistance to new social order will disappear. Consequently, law, the role of which is to sanction the existing social relationships, will not be needed as long as these relationships are observed voluntarily.”

Once social classes disappeared, so too would law: “With the disappearance of classes and social antagonisms, when society will become a society of equals, . . . then there will be no need for law. Then, this flower of class society, from which the fragrance of sweat and blood emanates, will fall into decay and will die away, because it will lose the ground on which it grew up, the ground of tears, sweat, blood, class oppression, slavery, and exploitation.”³³

Anti-law Tendency in Russia’s Past

The concept of a society without law was one that held attraction in the Russian intellectual tradition. True justice, it was said, rested less on procedures and courts than on a just ethical and social order in society.³⁴ Moral goodness would render legal safeguards superfluous.

The issue of the role of law had taken on a certain currency in 1864, when Tsar Alexander II introduced law reform designed to bring

Russia closer in line with Western Europe. In Russia, the power of the tsar was unchecked by any other branch of government. A story, perhaps apocryphal, is told of Tsar Peter the Great on a trip to London in 1698. Peter happened to visit the House of Lords while it was handling judicial cases. He asked about the people he saw wearing wigs and black gowns. "They are lawyers, sir," his guide answered. "I have but two in my whole dominions," Peter reportedly answered, "and I believe I shall hang one of them the moment I get home."³⁵

No parliament existed in Russia as a potential check on the tsar. Courts provided little check on officialdom. Only in 1775 were courts established, staffed by judges, rather than by administrative officials.³⁶ But Russia's judges did not rein in the tsar's officials.³⁷ They never gained independence from provincial governors or other officials.³⁸

Alexander Herzen, the Russian revolutionary of the 1840s, said that the lack of legal rights, particularly for the peasantry, led to an anti-legalistic frame of mind: "The wild injustice of half of the laws," he said, taught the people "to hate the other half." The public, he said, was "subjected" to the laws as it might be subjected to a force.³⁹ "Complete inequality before the courts killed in the people any respect for legality," said Herzen. "The Russian person, whatever his social status, subverts or violates the law wherever he can do so without being punished; and the government acts precisely the same way."⁴⁰

In 1864, Alexander II gave the judges life tenure, as one element in his judicial reform.⁴¹ But Alexander II nonetheless claimed power to remove judges at will,⁴² and when the courts failed to convict persons who challenged tsarist authority, he and his successors curbed the courts.⁴³ There did not develop in Russia a sense of the importance of legal safeguards.⁴⁴ A "juridical nihilism in the mass consciousness," said the Soviet legal scholar V. A. Tumanov, remained a feature of Russian life, because the time period during which the reform was in effect was not sufficient to change public attitudes.⁴⁵

The Withering Away of Law

The 1864 reform had one important side effect. Jury trials were introduced as part of the reform, and lawyers plead their cases to juries, often quite eloquently. Lawyers began to challenge tsarist authority as they argued for the rights of their clients.⁴⁶ Some lawyers went into politics of the liberal, or even radical, type. Among them was Vladimir Ilich Ulianov.

PART TWO

THE WEST ACCOMMODATES

Panic in the Palace

THE SOVIET GOVERNMENT CAME TO POWER WITH A BATTERY of ideas that threatened the West. Although its ability to carry through on the ideas was uncertain, the mere positing of the ideas sufficed to make Western governments take notice. The 1917 revolution staged by the Bolsheviks in Russia sent shock waves through the industrialized West. Prime ministers and monarchs feared lest their heads be next on the chopping block, figuratively and literally.

Western leaders, albeit not with one voice and not with great consistency, initially opted to put the Bolshevik Revolution down militarily. The Bolshevik government was too great a menace to allow it to consolidate its hold on the vast territory of the tsars.

In December 1917, France and Britain concluded a secret pact for military intervention against the Bolsheviks. They agreed to fund the anti-Bolshevik forces in the south of Russia. They anticipated dividing southern Russia into spheres of influence. France would take Bessarabia, the Ukraine, and the Crimea, while Britain would take the Caucasus and Kurdistan.¹

World War I was still in progress, and Russia was on the Allied side against Germany. Under pressure from Germany, which rapidly moved to take over the Ukraine and threatened to go farther, the Bolsheviks concluded a unilateral peace, the treaty of Brest-Litovsk.² Russia's withdrawal from the anti-German alliance eliminated the eastern front

against Germany and left the prospect that Germany might successfully attack to the west and defeat France and Britain.

The German offensive came in the spring of 1918. While costly to France and Britain, it failed. The military *attachés* of Italy, France, England, and the United States met in Moscow on May 27, 1918, and decided to propose intervention to their governments. The Supreme War Council of the Allies, meeting at Versailles, adopted the proposal.³

David Francis, U.S. ambassador to Russia, issued calls on the Russian people to overthrow the Bolsheviks.⁴ French and British intelligence operatives channeled funds to pro-monarchist elements and to the Social Revolutionary Party, in a plan to assassinate Bolshevik leaders. The Social Revolutionary Party was leftist, but anti-Bolshevik. In July 1918, a Social Revolutionary assassinated the German ambassador in Moscow, in what was to be the signal for an anti-Bolshevik uprising.⁵ Another Social Revolutionary assassinated Moisei Uritsky, head of the Bolshevik Cheka (secret police), and still another shot and wounded Lenin.⁶

Northern Russia

In the northern port of Archangelsk, British agents, working with White Russian (anti-Bolshevik) elements, organized an armed uprising against the local Soviet administration. On August 2, 1918, by prior arrangement, a coalition of Russian political parties overthrew the Soviet administration there, and British and French warships occupied the port. The stated reason was to retrieve supplies the Allies had sent to Russia that were stored in Archangelsk.

By the time the Allied force landed at Archangelsk, the Soviet troops had retreated south with their supplies.⁷ U.S. and other Allied forces, along with White Russian troops, pursued the retreating Soviet forces as part of their effort to overthrow the Bolsheviks.⁸

British, French, and U.S. troops became the effective government of the area around Archangelsk, propping up an anti-Bolshevik

provisional administration.⁹ The Allied command, wrote the *Chicago Tribune*, was “dominating every department, forcing their own ideas and judgments against the wishes of the north Russian provisional government.” The command established martial law, which put it above the provisional government. The population grew resentful.¹⁰

The U.S. forces were put under British command, so that the British determined events on the ground.¹¹ The Allied forces took up positions in towns to the south of Archangelsk and from there engaged Soviet troops. George Chicherin, the Soviet commissar for foreign affairs, sent U.S. President Woodrow Wilson a note offering an armistice and proposing a withdrawal of U.S. forces, but Wilson did not reply.¹² The All-Russian Congress of Soviets issued a public appeal to the Allies to enter peace negotiations.¹³

For the United States, the stated purpose was to prevent Allied supplies from being given to the German army.¹⁴ E. H. Carr, a leading historian of Russia, called this proffered justification a pretext.¹⁵ The *Chicago Tribune* called it propaganda.¹⁶ Nothing the Allied forces did in north Russia had any impact on the war with Germany.¹⁷

The British stated their purpose more broadly. Declaring, erroneously as it turned out, that the Soviet government was collaborating with Germany, the British government said that its aim was to help non-Soviet Russians organize to fight against Germany. But in a proclamation to the troops, the British commander in north Russia stated, “We are up against Bolshevism,” that “the power is in the hands of a few men, mostly Jews, who have succeeded in bringing the country to such a state that order is non-existent. Bolshevism has grown upon the uneducated masses to such an extent that Russia is disintegrated and helpless, and therefore we have come to help her get rid of the disease that is eating her up.” The proclamation said that the aim was “the restoration of Russia,” by which was meant a non-Soviet Russia.¹⁸

In November 1918, an armistice was signed with Germany. Allied troops in northern Russia thought they should be able to go home.¹⁹ Wilson left them there, still fighting the Soviets. A British commander

explained to the troops following the armistice that “there will be no faltering in our purpose to remove the stain of Bolshevism.”²⁰ Disaffection intensified among the Allied troops, who did not understand why they were fighting.²¹ Disease was rampant because of the privations of the northern winter, and some mutinies occurred.²²

U.S. Secretary of State Robert Lansing reported troop morale as “not good.”²³ Wilson’s special envoy to Moscow, William C. Bullitt, said that the “American, British and French troops at Archangel are no longer serving any useful purpose. Only 3,000 Russians have rallied around this force.” Bullitt warned that unless the troops were withdrawn quickly, they might be wiped out by Soviet forces.²⁴

By early 1919, the British had 18,000 troops in the northern Russian theater, the United States, 5,000, and the French and Italians, smaller numbers.²⁵ The British wanted Russians to fight in their army, but few volunteered.²⁶ The *Chicago Tribune* reported from the scene that “the Russians distrust the entire expedition,”²⁷ so the British conscripted Russians, who then fought under British command.²⁸ A U.S. sergeant wrote a letter home, saying, “we are absolutely ignorant of any cause for being here, and we appeal to the folks at home to enlighten us. If we are here to improve conditions of the Russians and to destroy bolshevism, which we must admit is a dangerous institution, does it not seem right the Russians should assist us? But they refuse to go to the front and fight with us.”²⁹ In February 1919, the Soviet forces attacked U.S. troops 300 miles south of Archangelsk, stopping their drive into the Russian heartland.³⁰

Siberia

In Siberia as well, the Allies intervened. The British and French had 7,000 military personnel training and equipping the anti-Bolshevik force of Admiral Kolchak in western Siberia.³¹ In August 1918, Wilson

sent 10,000 troops into the far east Siberian port of Vladivostok.³² The force, which accompanied a larger Japanese contingent, was to help a Czech force move across Siberia to the Pacific, in order to sail to Europe to fight Germany on the western front.³³

The Czechs had been conscripted into the Austro-German army to fight Russia but had deserted in droves. By mid-1918, they were actively fighting the Bolsheviks.³⁴ The Czech force did get to Siberia, but instead of sailing for Europe it stayed in Siberia and fought for Admiral Kolchak, controlling at one point a large section of Siberia.³⁵ Helping the Czechs was hardly necessary. Rather, they were part of an interventionist force that the Allies would join.

A second reason for the Siberian intervention, said Wilson, was “to steady any efforts of the Russians at self-defense or the establishment of law and order in which they might be willing to accept assistance.”³⁶ On the Siberian Pacific coast, the U.S. troops never entered the civil fray directly, but one of their functions was to keep open the trans-Siberian railroad, because, as Wilson said, “the forces of Admiral Kolchak are entirely dependent upon these railways.”³⁷

Southern Russia

In the south of Russia, France and Britain openly supported the anti-Bolshevik forces. In an October 27, 1918, letter to France’s general in charge of France’s armies in the eastern Mediterranean, French Prime Minister Georges Clemenceau stated the aim as being “to achieve the economic encirclement of Bolshevism and to precipitate its downfall.”³⁸

The Allies called a conference of interested governments and anti-Bolshevik elements at Jassy, Romania, in November 1918 to coordinate efforts. Allied troops were soon in southern Russia, supplying the army of General Denikin and fighting themselves.³⁹ The evident strategy was

to connect with the Allies moving south from Archangelsk and with General Kolchak in western Siberia, squeezing the Soviets.⁴⁰

Wilson acknowledged in January 1919 that the U.S. troops were in Russia to stop the Soviets. The contributing nations were all repelled by Bolshevism, he said, and for that reason had put troops into Russia. But Wilson feared that the troop entry was helping the Bolsheviks more than it was hurting, because the Bolsheviks were able to rally the people in opposition to foreign intervention.⁴¹ The U.S. State Department sent an emissary to Stockholm for talks with Soviet emissary Maxim Litvinov, aimed at a withdrawal, and Litvinov was conciliatory.⁴² Nonetheless, Wilson did not pull the U.S. troops out.

Controversy in the U. S. Senate

In Washington, the intervention against the Bolsheviks became a political issue. Senator Hiram Johnson said on the Senate floor that U.S. soldiers “without warrant of law and in violation of the Constitution of the United States are killing and being killed in Russia to-day.”⁴³

Johnson said that the Wilson administration had claimed that “we entered Russia not to take any territory” or to interfere in local government, but, he said, these statements “were false in fact and were given to lull not only the Russian people into a false security but to lull the American people as well.”⁴⁴

Johnson quoted from the *Chicago Tribune*, which wrote that the aim of the expedition was to help Europe collect Russia’s debt.⁴⁵ French and British interests had loaned large sums to the tsarist government, and the Bolsheviks had repudiated the debt.⁴⁶

The U.S. Senate passed a resolution in June 1919, asking Wilson to explain “the reasons for sending United States soldiers to Siberia.”⁴⁷ Senator William Borah said that “while Congress has not declared war, we are carrying on war with the Russian people. We have an army in Russia; we are furnishing munitions and supplies.” Borah said that the

United States was engaged in a “military intervention to put down a certain force in Russia and establish a government satisfactory to the Allied powers.” He said that “every boy who dies in Russia is a sacrifice to the unlawful and intolerable scheme.” While expressing no sympathy to Bolshevism, Borah said, “if they see fit to have a soviet government, it is their business.”⁴⁸

U.S. forces remained in Archangelsk until June 1919, fighting the Soviet forces.⁴⁹ By then, they had suffered 2,500 dead and wounded.⁵⁰ A new British force came to Archangel to replace the U.S. forces, aiming to drive the Soviet forces southward again.⁵¹ But by September it failed, less from the pressure of Soviet troops than from the inability to convince the Russian conscripts to fight the Soviets. The British withdrew.⁵² In east Siberia, U.S. troops were withdrawn from Vladivostok in April 1920, after the Kolchak forces were defeated.⁵³ The Japanese stayed until October 1922, trying unsuccessfully to extend their influence over east Siberia.

Impact of the Intervention

The anti-Bolshevik intervention was motivated by opposition to the Bolshevik philosophy, in part from fear that it would spread west, and in part from the loss of access to the Russian market, which had been dominated by Western firms prior to World War I.⁵⁴ The intervention did not stop the Bolsheviks, but it ensured a continuing hostility and left the Bolsheviks concerned about Western intentions. E. H. Carr thought that “the action of the allies confirmed and intensified the ideological aspect of Soviet foreign policy and made international revolution once more its principal plank, if only in the interest of national self-preservation.”⁵⁵

Subsequent Soviet efforts at promoting revolution abroad would heighten Western concern over the Soviet ideological challenge. If Carr is correct in his assessment that the 1918 intervention led the

Soviet government to promote revolution abroad in the interest of self-preservation, the intervention may have promoted the Soviet activity that rendered the Soviet system an ideological challenge to the West.

British prime minister David Lloyd George expressed misgivings over intervention. Lloyd George told the other Allied leaders in January 1919, if the Allies tried to put down Bolshevism in Russia, “that would make England Bolshevist, and there would be a Soviet in London.”⁵⁶ Lloyd George feared that the Bolsheviks were sufficiently popular in Western Europe that an Allied onslaught on them would spark uprisings in Western Europe.

U.S. President Wilson took up Lloyd George’s theme. He acknowledged economic and social problems in the West: “If it were not for the fact of the domination of large vested interests in the political and economic world, while it might be true that this evil was in process of discussion and slow reform, it must be admitted, that the general body of men have grown impatient at the failure to bring about the necessary reform.” There was, he said, “a minority possessing capital and brains; on the other, a majority consisting of the great bodies of workers who are essential to the minority, but do not trust the minority, and feel that the minority will never render them their rights.” The “whole world,” he said, “was disturbed by this question before the Bolsheviks came into power. Seeds need soil, and the Bolshevik seeds found the soil already prepared for them.”⁵⁷

Isolating the Bolsheviks

Even after the civil war ended in Russia, the West continued to view the Soviet government as a threat. Western governments were reluctant to acknowledge the Soviet state. They boycotted trade and refused to recognize the Bolsheviks as a legitimate government of Russia. They had practical as well as philosophical rationales. The Soviet government refused to pay large debts accrued by the tsarist government to

Western banks. "All foreign debts are cancelled, unconditionally and without any exceptions," decreed the Central Executive Committee in January 1918. The Soviet government said it represented a different social stratum and therefore was not responsible for "governmental debts contracted by the governments of the Russian landowners and the Russian bourgeoisie."⁵⁸

Despite their concerns, Western governments found practical reasons to deal with the Soviet government. It controlled too large an area for Western governments to ignore. One by one, during the 1920s, Western governments began to trade with the Soviet government and gave it diplomatic recognition. Accommodation was reached on the debt issue. The Soviet government agreed to repay at least some debts.⁵⁹ The United States was the last of the major powers to start trade and to recognize the Soviet government, doing that only in 1933.⁶⁰

Dealing with the Soviet Union at a practical level did not, however, diminish the challenge that it posed to the Western legal and political order. To the contrary, events in the West heightened the seriousness of the challenge. As Western economies sank into depression after 1929, the Soviet message of a good life for all took on added meaning. The Soviets said that the cycles that produced the depression were inevitable under capitalism and would only become worse. To those standing in bread lines in the West, the message brought hope. To Western governments, the message was a nightmare.

Enter the Working Class

THE BOLSHEVIK REVOLUTION HEIGHTENED THE FEAR OF Marxist ideas. Now the ideas existed not only in the minds of workers; they were being implemented in a major country.

Making the threat seem the more real, war-weary workers in Germany abandoned their factories, marched on the institutions of political power, and brought down the monarchy.¹ In Hungary in March 1919, a government aligned with the Bolsheviks took power.² Although it lasted only a few months, it showed the potential impact of Bolshevism elsewhere in Europe. German political parties, including even the social democrats, worked against the revolutionary forces.³

“The general postwar atmosphere,” wrote historian John Thompson, “coupled with disquieting examples of military disaffection and social disorder, raised prominently in the minds of Western statesmen the threat of Bolshevism, not only to Russia and Germany, but even to their own countries.”⁴ “The spirit of the Bolsheviks is lurking everywhere,” U.S. President Woodrow Wilson confided to a British colleague, “There is grave unrest all over the world.”⁵

Trouble in the United States

The United States was in the throes of concern about domestic Bolshevism. A small but vocal minority within the labor movement regarded

Enter the Working Class

the Bolshevik Revolution as a harbinger of America's future.⁶ In Seattle in February 1919, in the course of a shipworker strike, local labor organizations declared a general strike and shut down the entire city for several days.⁷ May Day demonstrations were large, and in several major cities they turned violent. Bombs, apparently sent by anarchists, were received by politicians across the country.⁸

In May and June, a general strike shut down the Canadian city of Winnipeg for over a month, with the city government in the hands of a strike committee.⁹ In the United States, members of the Industrial Workers of the World were prosecuted in a number of states under statutes labeled criminal syndicalism, for advocating violence to achieve industrial reform.¹⁰ The year 1919 brought more than its share of labor strikes, and industrial interests, and newspapers along with them, proclaimed the strikes to be Bolshevik-influenced.¹¹ Labor organizing suffered as unions became tainted by the charge of Bolshevism.¹²

Government committees investigated radicalism and found many radicals to be aliens. The federal government raided homes and establishments where it thought it might find radicals, particularly members of two recently formed communist parties. Of those who were aliens, some were ordered deported.¹³ Many who were U.S. citizens were turned over to state authorities, who prosecuted them for criminal syndicalism, which was defined as advocacy of the overthrow of organized government by force or other unlawful means.¹⁴ Various states passed syndicalism laws, as well as laws prohibiting the display of a red flag.¹⁵

Labor Law in the West

The law in Europe left the employment relationship a matter of private contract between worker and employer. Employment continued at the will of the parties to this contract, meaning that a worker could be fired at any time. In Britain, the organization of workers into unions was a crime until the statute was repealed in 1824.¹⁶ Still, the law in Britain

and elsewhere gave no protection against dismissal to a worker who engaged in labor organizing.

In the late nineteenth century, Europe reformed labor law, pressured by worker demands reflected in the social democracy movement:

Under the influence of a developing social consciousness and the ideas propagated in many European countries by the 1848 revolutionary movement, the doctrine of *laissez-faire* began to weaken. The demands for national legislation for the protection of the workers became more clamant, some such legislation was actually enacted, and a vigorous impetus was given to the conception of international labour legislation.¹⁷

The Bolshevik Revolution provided a major new impetus. Lenin's group had split from the Second International in 1914 to form a Third International on a platform of immediate and violent overthrow of capitalism and of states supporting capitalist structures. The Bolshevik Revolution put that philosophy in power. The uprisings in Hungary and Germany, in the aftermath of the war, brought the specter of disaster even closer. Among ministers at Versailles, wrote the International Labor Organization's general director, "there was general recognition that the ferment and instability which characterized the world of labor and industry in 1918 and 1919, particularly in Europe, called for immediate and constructive action."¹⁸

Sympathy developed for the Bolshevik Revolution among workers in Western Europe, a fact that put pressure on Western governments to institute reform. Wilson said at Versailles that there was, throughout the world, a feeling of revolt against the large vested interests that influenced the world in both the economic and the political spheres. This problem should be cured by reforms, he said, but some in the United States were in sympathy with Bolshevism because it appeared to offer opportunity to the individual.

Some progress, Wilson said, had been made in the United States, to check the control of capital over the lives of men and over government.

Enter the Working Class

Yet the “vast majority who worked and produced” were convinced that the “privileged minority” would never relent. Unless some partnership between the two interests could be achieved, “society would crumble.” Reforms were needed because Bolshevism could not flourish if the soil in the West were not ready to receive it.¹⁹

At Versailles, Allied leaders were concerned about the situation of west European workers, who might heed the Soviet call and revolt against their bosses and governments. The conferees brainstormed on ways to check Bolshevism’s expansion to the West. “Bolshevism is spreading,” French prime minister Georges Clemenceau told the conferees. “If Bolshevism, after spreading in Germany, were to traverse Austria and Hungary and to reach Italy, Europe would be faced with very great danger.”²⁰

Lloyd George wrote to the Versailles conferees in a confidential memorandum, “There is a deep sense not only of discontent, but of anger and revolt, amongst the workmen against pre-war conditions. The whole existing order in its political, social and economic aspects is questioned by the masses of the population from one end of Europe to the other.”²¹

International Labor Organization

To dampen the attraction of Bolshevism in Western Europe, the Allies took a major step. They formed a structure to deal with worker rights – the International Labor Organization (ILO).²² This was the first international organization to be formed on any issue of individual rights. The Allies’ aim was to blunt worker opposition that might lead to revolution. “Improvement in the conditions of labour,” writes Louis Henkin on the ILO, “was capitalism’s defence against the spectre of spreading socialism which had just established itself in the largest country in Europe [Russia].”²³ The Allies set up the ILO to counter “the threat of social unrest.”²⁴

In the preamble to the constitution they drafted for the ILO, the Western powers pledged joint efforts to reduce hours of work, prevent unemployment, raise wages, and protect workers from disease and injury; to protect child workers; and to protect freedom of trade union organizing for workers. The preamble drew the conclusion that “improvement of those conditions is urgently required.” It stated, “Conditions of labor exist, involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled.”²⁵

The preamble language was a clear reference to the Bolshevik Revolution, expressing concern that unless working conditions improved, Western governments might face the fate of the tsar’s. G. N. Barnes, the British delegate speaking at Versailles on plans for the ILO, said that “age and want, that ill-matched pair, too often haunted the mind of the worker during his working life,” and that these conditions “have produced a workman who is class-centered.” As a result, workers had become “a menace to the peace of the world.” By tying the ILO into the League of Nations, he said, “a favorable impression will be created on Labor in all countries because the impression will be created that the Peace Conference is seriously regarding this Labor problem.”²⁶

Some governmental representatives at Versailles, like Barnes of Britain and Vandervelde of Belgium, were socialist democrats.²⁷ Trade unionists participated in the drafting of the ILO charter, and under it a tripartite system of control was established, with equal participation by governments, trade unions, and industrial companies.

As the ILO began operations in the 1920s, concern over labor agitation continued as a strong motivating factor for its work: “The danger was that since it had been founded to help the workers, failure might cause the workers to abandon the Organisation and go over to the extremists.”²⁸ The Soviet government, correctly assessing the reason the ILO was founded, derided it as “a capitalist attempt to blunt the class consciousness of the workers.”²⁹ It denounced the ILO as a mechanism of the capitalist class, designed to continue its oppression

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of working people by making only minor concessions.³⁰ This criticism put additional pressure on both the ILO and Western governments to accommodate to working-class concerns.

Over the following decades, the ILO drafted labor standards on a wide variety of subjects, and many of the proposals found their way into labor legislation in individual countries. The ILO conducted on-site inspections in response to allegations of violations of worker rights, often criticizing a government for such violations.

The Soviet Union continued to chastise the organization as being ineffective in protecting workers. “The practical results of the activities of the ILO are not great,” read a Soviet international law text, “insofar as many of the conventions drafted by the Organisation have either remained unratified or been ratified by only a small number of States, and not including the major industrial States.”³¹

A Right to Organize in the United States

Western governments took measures to avert worker unrest. The Soviet promise of full employment had a particular impact when the Depression of the 1930s sent unemployment through the roof in the countries where capitalism prevailed. Western governments began to consider it their obligation to ensure employment. Legislation, and even constitutions, called for jobs and job protection.

In the United States, legislation was introduced to recognize the right of workers to organize, and an obligation of employers to bargain with workers over wages and conditions of work. As this legislation was being processed, Soviet legislation, along with legislation of other countries, was studied by the U.S. Senate. These deliberations resulted in the adoption of the National Labor Relations Act.³² A primary reason for the Act was to end threats to commerce caused by work stoppages by workers demanding better pay or conditions. The Act established a mandatory mechanism to curb worker action. Workers had been

encouraged, in part, by the Soviet workers' rights in Soviet labor legislation. President Franklin Roosevelt sought, as a "New Deal," to avert more thorough-going reform of the economy by making concessions to workers. Forcing employers to bargain with workers gave workers a prospect of gaining their demands through lawful channels.

Louis Brandeis, a leading light of the New Deal, thought that bringing labor into a legally recognized role in negotiating terms with management might avoid socialism. Brandeis said that "the prevailing discontent is due perhaps less to dissatisfaction with the material conditions, as to the denial of participation in management." Hence, he thought, "the only way to avoid Socialism is to develop cooperation in its broadest sense."³³

At President Roosevelt's initiative, the United States, by then the most developed free-market state, introduced pro-worker programs, including old age and disability pensions, and unemployment compensation.³⁴

The Second World War provided additional impetus for the proclamation of rights in relation to employment. The USSR, promoter of the concept, was an ally, albeit a complicated one. The devastation to human life brought by the war heightened the will to protect human life and dignity.

Early in the war, President Roosevelt declared his vision of a post-war "world founded upon four essential human freedoms." One, Roosevelt said, was "freedom from want," by which he meant "economic understanding which will secure to every nation a healthy peacetime life for its inhabitants – everywhere in the world."³⁵

In 1944, Roosevelt spelled out this vision, which included a concept like that espoused by the Soviet government, that individuals should enjoy legally protected rights in regard to employment and the economic necessities of life. It was not acceptable, he said, "if some fraction of our people – whether it be one-third or one-fifth or one-tenth – is ill-fed, ill-clothed, ill-housed, and insecure." After reciting the rights embodied in the U.S. constitution's Bill of Rights, Roosevelt said that

“these political rights proved inadequate to assure us equality in the pursuit of happiness. We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence.”

In support of that proposition, Roosevelt invoked, but gave new meaning to, a doctrine developed by the English courts of chancery to protect debtors who were being unfairly harassed by creditors. “Necessitous men are not free men,” he said, quoting the court.³⁶ “People who are hungry and out of a job are the stuff of which dictatorships are made.” Referring to what he viewed as a national consensus on the point, Roosevelt said, “We have accepted, so to speak, a second Bill of Rights under which a new basis of security and prosperity can be established for all.” Then he listed eight matters he viewed as rights, two of which related to employment: “the right to a useful and remunerative job in the industries or shops or farms or mines of the nation; the right to earn enough to provide adequate food and clothing and recreation.”³⁷ Roosevelt was accepting the Soviet position that a job is a matter of legal right.

Roosevelt also addressed as an issue of legal right a protection for workers in the case of departure from employment. As one of the rights in his bill of rights, he identified “the right to adequate protection from the economic fears of old age, sickness, accident, and unemployment.”

Labor Rights as Constitutional Law

After World War II, constitutions began to guarantee worker rights. Social democrat and other leftist elements, inspired by the ideas of the Soviets, were influential in this development.³⁸ Italy’s constitution proclaimed a right to work and a right of workers to participate in the management of enterprises. The Italian government was to be responsible for full employment.³⁹ This right to employment was to be secured by the government by creating economic and social conditions to facilitate

the acquisition of jobs.⁴⁰ Workers were also to have a right to participate in the management of enterprises.⁴¹

Social democrat forces in Italy were instrumental in getting these notions accepted as constitutional norms.⁴² The elected Constituent Assembly consisted of 207 Christian Democrats, 115 Socialists, 104 Communists, 23 Republicans, and 19 Liberals. The drafting involved political compromise among legislators of all these perspectives.⁴³

A similar dynamic was at work in France. Its 1946 constitution broadly guaranteed worker rights: a right to trade-union action, a right to join a union of choice, a right to strike, a right to collective bargaining, a right to health benefits, a right to material security, and a right to rest and leisure.⁴⁴

All over Western Europe just after World War II, social democratic elements were strong. Leftists had led the guerrilla resistance to Nazi occupation, and they emerged from the war with a great residue of public respect for their ideas. Their efforts were responsible for much of the new worker-oriented legislation.⁴⁵

European countries drafted a treaty, the European Social Charter, to protect a variety of economic rights, including those of workers. In the Charter, the European countries agreed “to accept as one of their primary aims and responsibilities the achievement and maintenance of as high and stable a level of employment as possible, with a view to the attainment of full employment.”⁴⁶

The United States also acted to promote employment, in keeping with the principles stated by Roosevelt. The U.S. Senate passed a bill declaring that it was the responsibility of the federal government to maintain full employment and to assure opportunities for employment for all persons able and willing to work to exercise their right to full employment.⁴⁷ The House of Representatives weakened that language somewhat, so that the bill as adopted declared it to be the “responsibility of the Federal Government to use all practicable means consistent with its needs and obligations and other essential considerations of national policy . . . to coordinate and utilize all its plans, functions, and

resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions under which there will be afforded useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and to promote maximum employment, production, and purchasing power.”⁴⁸ A federal court decided that this act did not require the federal government to become an employer of last resort, if full employment could not otherwise be attained. The act did, however, impose on the federal government a legal obligation to ensure high levels of employment in the economy.⁴⁹

For the government of a capitalist state, ensuring employment was difficult because it did not control industry. But gradually a duty to make an effort to ensure full employment came to be accepted.

At the United Nations, treaty writers moved to ensure full employment. With intense Soviet lobbying,⁵⁰ the United Nations General Assembly drafted a treaty on economic rights aimed at full employment. The International Covenant on Economic, Social, and Cultural Rights required states to undertake “policies and techniques to achieve . . . full and productive employment.”⁵¹

A few years later, the United Nations drafted a convention on women’s rights that included a right to work and which was phrased to apply to both women and men. The Convention on the Elimination of All Forms of Discrimination against Women guarantees “the right to work as an inalienable right of all human beings.”⁵² The Convention was ratified by more than 180 countries.

Legal guarantees went beyond the right to secure employment. They related as well to conditions of employment, following the lines charted by the Soviet government. The European Social Charter guaranteed reasonable working hours, a safe work place, fair pay, vocational training, social security benefits, and medical care.⁵³ The International Covenant on Economic, Social, and Cultural Rights called for “just and favorable conditions of work,” for “fair wages and equal remuneration for work of equal value,” for “rest, leisure and reasonable

limitation of working hours,” a right to form trade unions, including a right to strike, and a right to social insurance.⁵⁴

The law in Western countries came to cope with the phenomenon of sexual harassment, which had been identified by nineteenth century Marxists as one of the evils of the capitalist mode of production. The Dutch Marxist criminologist Willem Bongers had written: “the proprietors or their foremen by abusing their power force the working-girls who please them to yield to their desires. . . . The threat of dismissal suffices to overcome all resistance in nine cases out of ten, if not in ninety-nine cases out of a hundred.”⁵⁵

Job Security

Not only on job acquisition, but on job security, the West followed the Soviet lead. In the West, the relationship between employee and employer was contractual. Unless they were to agree to the contrary, either could end the relationship at any time. This was called the rule of employment at will, meaning that the worker served at the will of the employer.

However, this doctrine gave way to a requirement comparable to that pioneered in Soviet law that an employer prove cause to dismiss a worker.⁵⁶ In Germany, workers had already been afforded some protection from dismissal in 1926.⁵⁷ From 1969, a dismissal in Germany had to be “socially justified.”⁵⁸ In France, remedies were legislated in 1958 to protect a worker from dismissal,⁵⁹ and from 1973, a worker in France could be dismissed only for “real and serious reasons.”⁶⁰

A concept emerged in the law called redundancy policy, involving governmental payments to workers being dismissed in mass layoffs.⁶¹ This gave employers a financial disincentive to lay off workers and helped workers until they found new employment. In 1971, Britain required an employer dismissing a worker to prove either redundancy or that the worker was unfit for the job.⁶²

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“Public concern with labour unrest” was said to be a factor in enactment in Britain in 1975 of the Employment Protection Act, which further limited an employer’s right to dismiss a worker.⁶³ As in the USSR, a judicial remedy was provided under the Act to a worker claiming unfair dismissal.⁶⁴ A dismissed worker could take the employer to court to challenge the grounds alleged by the employer.⁶⁵

A negative side was that job security made it costly for employers to hire. In France in 2006, the government, concerned over high youth unemployment, moved to allow employers to fire younger workers without showing cause. Organized labor reacted sharply, creating a political crisis in France and forcing the government to back down.⁶⁶ The notion of job security was, by the turn of the twenty-first century, too engrained a concept to repudiate.

Western Labor Legislation as an Accommodation

The West could not ignore what emanated from behind the walls of the Kremlin. To cope with labor unrest, Western governments developed, if not a concerted strategy, then a series of counter-moves. They could maintain their domestic and international orders, Western leaders hoped, but only by finding accommodations to blunt the criticism being directed at them, criticism not only from the Kremlin, but from within their own populations.

Adoption of Soviet-style labor law solutions in capitalist states was viewed by one socialist analyst as a product of both the struggle of the working class in capitalist states and the desire of capitalist states to follow the more attractive features of socialism, as a way of making concessions to the working class:

The struggle of the working class in the bourgeois states has wrenched various concessions from the bourgeoisie which represent a certain approach to socialist solutions; on the other hand: in the peaceful competition of the two systems the bourgeoisie tries to

keep abreast with the attractive social conquests of socialism. Let us chiefly refer to social insurance, to labour law rules protecting the workers' interests in such fields as working hours, paid holidays, restriction of dismissal, improved labour safety, etc.⁶⁷

All these concepts, as developed in Soviet law, became standard in Western law.

Social Welfare Rights

ALSO UNDER THE INFLUENCE OF THE BOLSHEVIK REVOLUTION, Western governments instituted social welfare programs. Embracing the philosophy that government should take an active interest in the well-being of the citizenry,¹ they took responsibility for ensuring that citizens had shelter, medical care, and support in old age or in case of disability.²

Pressure from the political left had spurred some movement on welfare issues in the closing decades of the nineteenth century. In Germany, Bismarck instituted Europe's first social insurance programs in the 1880s, providing for old age pensions, as well as protection in case of unemployment, illness, accident, or disability.

At Bismarck's initiative, the German Reichstag adopted a Sickness Insurance Law (1883), under which employers and employees contributed to a fund to cover medical expenses in case of an employee's sickness. In 1884 followed an Accident Insurance Law under which employers were required to set up a fund to compensate workers injured on the job. In 1889 came an Old Age Insurance Law under which employers and employees contributed 50% each into a fund for old age pensions.³

Bismarck's aim was to counter the social democratic movement in Germany, which was making more thorough-going demands.⁴ Undermining Germany's social democrats, wrote one historian, was "the

ultimate motive” for Bismarck’s social reform laws.⁵ Speaking in support of these laws in the Reichstag, Bismarck said that a promise had been given “to remove the legitimate causes of Socialism.”⁶ Bismarck had been lobbied by Ferdinand Lassalle, the German socialist leader.⁷ The Sickness Insurance Law, writes one historian, “was primarily a means to preserve the existing social order, to minimize social conflicts, and to preserve the state from a radical overthrow.”⁸

The antisocial democrat thrust of Bismarck’s social legislation is reflected in the fact that his reform proposals were accompanied by his efforts to keep the Social Democrats from becoming a political force.⁹ Referring to the Social Democrats as “a social peril,” Bismarck pushed through in 1878 a law to ban the Social Democrats.¹⁰ The two policies were of one piece to Bismarck, as reflected in a public declaration by the Emperor, but attributed to Bismarck, in 1881, in which it was stated that the “redress of social problems is not simply to be sought by repressing Social Democratic excesses, but equally by positively promoting the workers’ welfare.”¹¹

Germany’s introduction of social insurance legislation was followed in Scandinavia and Britain, where social insurance schemes modeled on Germany’s were implemented at the turn of the twentieth century.¹²

Legal Aid

After the Bolshevik Revolution, the pressure for reforms of this kind increased still more. The pressure was felt, as we saw in Chapter 9, at the Versailles conference. One issue on which immediate pressure was felt from the Bolshevik Revolution was legal assistance. Legal aid programs had begun to develop in Europe already in the late nineteenth century, as part of the same movement toward social rights.¹³

Legal assistance to the poor was a welfare issue. “A very specific aspect of the welfare state is directed to overcoming inequalities in the

utilization of legal rights by measures such as the public subsidization of legal services.”¹⁴ A founder of legal aid in the nineteenth century in the United States, Arthur von Briesen, feared that poor immigrants deprived of legal redress would be “ripe to listen to those social agitators and disturbers who are only too prevalent.” Legal aid, he said, “keeps the poor satisfied, . . . it antagonizes the tendency toward communism; it is the best argument against the socialist who cries that the poor have no rights which the rich are bound to respect.”¹⁵ Von Briesen viewed legal aid as an accommodation to socialist ideas that would help maintain capitalism.

Legal aid received renewed attention in the United States following the revolution in Russia. A major impetus for legal aid in the United States at that period “came from the Bolshevik Revolution and the postwar Red Scare.”¹⁶ Extensive government support for legal assistance did not begin in the United States until the 1960s, but in the 1920s private legal aid societies backed by corporate funding grew.

Reginald Heber Smith, a prominent Boston attorney, drafted a report for the Carnegie Foundation, concluding that justice was available only to those who could afford it. Smith’s philosophical rationale for legal aid was similar to von Briesen’s. Smith advocated legal aid so that immigrants would “be assimilated and taught respect for our institutions.”¹⁷

Concern over Bolshevism was cited by an opponent of Smith’s reasoning. Charles Evans Hughes, Chief Justice of the United States, disputed Smith’s “false notion that our judicial establishment is only the mechanism of privilege.” Hughes feared that “to spread that notion is to open a broad road to Bolshevism.”¹⁸

Smith’s rationale that justice was largely unavailable to the poor carried the day, however, not only in the United States but in Europe as well. By mid-century, legal assistance programs funded by government were standard fare.

Great Depression

The pressure for government intervention increased when the world economy plummeted into depression beginning in 1929. Marx's theory of the inevitability of damaging cycles in a capitalist economy seemed to be proving itself true. Roosevelt's New Deal program rapidly expanded welfare state elements in the United States.¹⁹

So-called social rights emerged in the Western world – a right to housing, to an adequate diet, to fair wages.²⁰ “Social rights,” like those proclaimed in the Soviet Union, began to appear in Western constitutions.²¹ The Irish Constitution of 1937 set the goal that “the ownership and control of the material resources of the community may be so distributed amongst private individuals and the various classes as best to subserve the common good.” It said that “the state shall endeavour to secure that private enterprise shall be so conducted as to . . . protect the public against unjust exploitation.”²²

The Irish Constitution based its economic rights in part on a 1931 papal encyclical *Quadragesimo Anno*, which criticized unrestrained economic competition and embraced socialism: “Socialism,” read the encyclical, “in a certain measure approaches the truth which Christian tradition has always held sacred; for it cannot be denied that its demands at times come very near those that Christian reformers of society justly insist upon.”²³

Western states responded to socialism by legislating a variety of economic rights: “The liberal democracies have tried to solve the problems of inequality not by socialism but by the introduction of the welfare state, in which no citizen should ever lack the necessities of life: food and clothing, shelter, medical care, and support in old age or disability.”²⁴ In response to Marx's criticism that the French Revolution provided formal rights realizable only by the well-to-do, Western states “have embraced the principle that the state must act affirmatively to redress social and economic wrong by genuinely and effectively

Social Welfare Rights

touching the lives of its citizens instead of merely providing them with formal machinery. An essential aspect of this development has been the emergence of new ‘social rights’ such as a right to decent housing, to an adequate diet, or to fair pay.”²⁵

The United States introduced aid to dependent children.²⁶ In 1938, a provision was added to the constitution of New York, stating that “the aid, care and support of the needy are public concerns and shall be provided by the state.”²⁷

President Roosevelt supported the concept of economic welfare rights in his 1944 address. In describing what needed to be done to avert the phenomenon of “necessitous men,” Roosevelt specified three welfare items as rights: “the right of every family to a decent home,” “the right to adequate medical care and the opportunity to achieve and enjoy good health,” and “the right to a good education.”²⁸

Education had been accepted in the United States, as elsewhere in the Western world, as a governmental responsibility, to be satisfied by government-sponsored schools. Housing and health care were a different matter. But Roosevelt was accepting the proposition, as promoted by the Soviet government, that government has a responsibility on these issues.

Internationally Defined Welfare Rights

Rights regarding welfare issues began to appear in legal instruments in the West. Britain enacted a Health Service Law in 1946, instituting government-funded medical care.²⁹ The Soviet system of medical care had attracted considerable attention in the West.³⁰ France’s 1946 constitution guaranteed health care and material security.³¹ Welfare rights found their way into international human rights instruments. At the United Nations, the USSR pressed for inclusion of economic and social welfare rights as human rights. “Our feeling is that the arrangements for

the international economic and social cooperation are very important for the success of the International Organization,” said a Soviet delegate at the founding UN conference in San Francisco. “The lasting peace to come will depend, to a great extent, on the development of the international economic and social cooperation of the United Nations.”³²

In the UN Charter, clauses were included to have the organization promote economic and social cooperation among nations in order, in the words of Article 55 of the Charter, to achieve “conditions of stability and well-being which are necessary for peaceful and friendly relations among nations.” The Soviet government actively supported inclusion of language about these matters at the 1945 San Francisco conference at which the Charter was drafted. Speaking of the draft provisions on economic and social cooperation, the Soviet delegate, A. A. Arutiunian, who participated in the drafting, said, “I hope that these arrangements will help to create in the world necessary opportunities for all the nations and for all human beings to improve their economic, social, cultural, educational, health, and other related fields of life [*sic*]. I don’t think that there is a necessity here to say that my country, the Union of Soviet Socialist Republics, is a pioneer in the great cause of improving the economic, social, cultural, educational, health and other related conditions of the peoples of the U.S.S.R. We believe that our achievements in these very important fields of human rights have inspired and will continue to inspire humanity in its march to a better future.”³³

Concern about the Soviet Union was a factor in the post-War movement toward European unification. The European Social Charter called for social welfare rights like those that had found their way into Soviet law. The Charter called on governments to ensure medical care, requiring “that any person who is without adequate resources and who is unable to secure such services either by his own efforts or from other sources . . . be granted adequate assistance, and, in case of sickness, the care necessitated by his condition.”³⁴

At the United Nations, a treaty was being drafted on these issues, as we saw in Chapter 9, with the Soviet delegates in the forefront. The International Covenant on Economic, Social, and Cultural Rights dealt not only with labor, but with other social issues. Most Western powers ratified the covenant, which called for a broad array of economic welfare rights.

The covenant recognized, as a human right, “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing.” The covenant recognized “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” To this end, the contracting parties agreed to undertake “the improvement of all aspects of environmental and industrial hygiene,” and “the creation of conditions which would assure to all medical service and medical attention in the event of sickness.”³⁵ A later treaty, the U.N. Convention on the Rights of the Child, called for economic protection to all children: “States parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”³⁶

Two fields of law – administrative law and taxation law – which were of only marginal significance in Europe in the nineteenth century assumed central positions as a result of the development of the welfare state. As explained by one analyst,

The welfare state inevitably leads to many more points of contact between the state and the citizen, a contact which is enhanced by the much greater proportion of the population in the employment of the state (no matter whether the actual government is of the left or the right). The increase in the scale and complexity of taxation is one legal consequence of the welfare state and of state intervention. Another is the perceived need to defend the individual against the tyranny of the state; this has led to the growth of administrative law. In Britain, for example, tribunals have come into existence to provide non-technical remedies for such ills as unfair dismissal or

excessive rents and, in some countries, parliamentary, local and other commissioners (the ombudsmen) have been created to deal with failings in officialdom.³⁷

These two fields of law, in their current forms, thus are a product of the development of welfare as a legal right.

The State and the Economy

DESPITE THE LONG-TERM VISION OF THE WITHERING AWAY of the state, the Soviet concept of state responsibility for provision of services implied a strong role for the state. As a planned economy replaced private industry and commerce under the Soviet government, it became apparent that the state would play a major part in organizing the life of Soviet society.

During the 1930s, the Soviet government established a political and economic order based on a high concentration of both political and economic authority. The Soviet government directed the nation's economy, investing profits to promote industrialization.¹ To solidify that political and economic order, it gave itself the power to make its new economic order function.² Strong authority was exercised by a single political party, the Communist Party of the Soviet Union, and by the executive branch of government. Governmental planning of the economy involved strong direction from the central authorities.³

In substantive law, the most visible changes were in commercial law. As the state assumed the administration of the economy, it established legal forms for commercial activity within the state sector.⁴

The theory behind centralization was to build society to a point at which it could satisfy the needs of all its members on a basis of equality, and which would set the basis for a drastic reduction in governmental authority.⁵ All would receive what they need, rather than receive on the basis of what they produce.⁶ Material abundance was deemed a

precondition for a social order that would rely on citizen self-regulation.⁷ Individuals would contribute to the social good not because they would derive individual benefit from hard effort, but because they would be concerned to make society prosper, and that prosperity would redound to the benefit of all.⁸ Coercion of individuals would no longer be necessary, and law would die out.⁹

State Socialism in the West

Just at the time that this state socialism was being solidified in the Soviet Union, the challenge of Soviet ideas was especially strong in the 1930s, as economic depression eroded public confidence in capitalism.¹⁰ Workers lost jobs in large numbers, and many looked to the Soviet Union as a solution. There, employment was high as the government was in the midst of an industrialization drive. The Soviet oasis of full employment in a world wracked by depression was a powerful symbol of the possible.

Providing employment meant managing the economy as never before.¹¹ In the United States, President Franklin Roosevelt urged government involvement in the economy, “to obviate revolution,” he said. During his 1932 campaign for the presidency, Roosevelt explained that his purpose was “to teach the country to march upon its appointed course, the way of change, in an orderly march, avoiding alike the revolution of radicalism and the revolution of conservatism.”¹²

Roosevelt thought that a small dose of socialism would preserve the existing order. He would “inoculate” the country with socialism “to escape the disease.” “I want to save our system, the capitalistic system,” Roosevelt said, and “to save it is to give some heed to world thought of today. I want to equalize the distribution of wealth.” Roosevelt’s biographer Arthur M. Schlesinger Jr. related a conversation in which Roosevelt, describing the need for higher taxes on the wealthy,

explained, “We do not want communism in this country and the only way to fight communism is by . . .” At that point Roosevelt’s interlocutor interjected “neo-communism,” in response to which Roosevelt laughed.¹³

Roosevelt proposed legislation for a new and unprecedented role for government in the economy. The government would regulate private industry to curb its abuses. It would regulate the money supply to stimulate the economy out of downturns. Roosevelt embraced the thinking of the British economist John Maynard Keynes, whose views came to be called after his name. Keynesianism involved leaving production, price, and wage decisions to private companies but sought to regulate the financial climate in which companies made these decisions.

During times of depression, government would spend more, or decrease taxes, to generate increased demand for goods. During periods of full employment and rising prices, the government would raise taxes and reduce government expenditures, in order to keep wages and prices from going too high. Thus, the government would avoid the peaks and valleys that were endemic to capitalism and disruptive of the lives of those who lived under it.¹⁴

The early New Deal was pointed toward extensive control of industry and agriculture. Although the government soon backed off this highly directive approach, it did institute regulation to curb a variety of abuses in the economy. The Securities and Exchange Commission monitored fraud in stock transactions. The Food and Drug Administration checked on the safety of consumables.

Agricultural prices were low relative to prices for other products, and the government initiated a program in 1933 to require farmers to limit production. The government would pay farmers for limiting production, and fine them if they produced more than was allowed.¹⁵ This law involved major government interference in the economy. In his 1941 address, Roosevelt spoke in the language of legal right about prices for agricultural commodities. As one of the rights in his Second

Bill of Rights, Roosevelt identified “the right of every farmer to raise and sell his products at a return which will give him and his family a decent living.”¹⁶

Roosevelt thought that the reforms he was instituting would move the United States significantly in the direction of socialism, even though his aim was to avert it. In a conversation with Under Secretary of State Sumner Welles, Roosevelt applied numbers to the degree of change. He told Welles that “if one took the figure 100 as representing the difference between American democracy and Soviet communism in 1917, with the United States at 100 and the Soviet Union at 0, American democracy might eventually reach the figure of 60 and the Soviet system might reach the figure of 40.”¹⁷

As World War II ended, with leftist forces popular in Western Europe, the United States undertook a political-economic counteroffensive to keep Western Europe from going over to socialism. The United States instituted the Marshall Plan to ensure that the economic recovery that Western Europe needed after the war would be done on a free-market basis. The Marshall Plan “launched the American challenge to the Soviet Union.”¹⁸

Nonetheless, after World War II, Europe moved strongly toward government involvement in the economy. Britain nationalized coal, steel, transport, electricity, and gas, and France nationalized coal, electricity, gas, and press enterprises.¹⁹ France undertook state planning for private industry, enforced by a variety of financial incentives.²⁰

This development was a product of socialist philosophy of the social democratic tradition. Nationalization of major industries following World War II proceeded from this philosophy:

The series of nationalisation laws which after the last war socialised, in Britain, the basic industries of coal, transport, electricity and gas, and, in France, coal, electricity, gas and press enterprises, were the expression of a political philosophy which demanded the public control of these basic industries as well as certain other enterprises.²¹

Governmental economic planning in Europe was instituted at the supranational level as well, with formation of the European Economic Community.²² That development came in part from a view that Europe needed to strengthen itself for protection against the Soviet Union.²³

The principle of state intervention was accepted by Western governments. They had a sufficiently high level of production that governments were able, by extracting wealth from the private sector, to provide the social welfare benefits that in the USSR were provided from the proceeds of public enterprise. Governments came to be seen as bearing an obligation to promote economic development.²⁴

In the United States, the government intervened in the economy with price support programs in agriculture, output controls, minimum wage laws, construction of public housing, and regulation of many industries.²⁵ There grew in the 1950s a military-industrial complex that came to play a major role in the country's economic life. The government, in purchasing military equipment, influenced the direction of private industry.²⁶

Governmental intrusion had a profound impact on Western institutions. The Western commercial contract took on "certain aspects of the contract of a planned economy" and in some instances was "subordinated to decisions taken by a public authority."²⁷

Harold Berman sees an imprint from the Russian revolution. Viewing "state planning, through law, of the economy" as one of "the chief contributions of the Russian Revolution, for good and for ill, to the Western legal tradition in the long twentieth century," he notes that these ideals were written into Soviet law when it established "the right to work, the right to old age pensions, free medical care, and free higher education." Berman notes, "In virtually all countries of the West, governmental bureaucracies in the twentieth and twenty-first centuries have come to control, directly and actively, the economy, communications, education, health care, conditions of work, and other aspects of economic and social life." Bureaucracies implement their control by administrative regulation.²⁸

Socialist analysts thought that the adoption in the West of public control over certain economic sectors would eventually lead to socialism:

Bourgeois law adjusts itself to such circumstances for which the social ownership could provide the suitable bases and adequate framework. [T]he principal characteristic of the said convergence [between capitalist and socialist law—J.Q.] is the approach of the solutions of the bourgeois law to those familiar to social ownership, without actual social ownership nevertheless. Characteristic of this process is that it is not merely temporary, that it accumulates quantitative changes for a subsequent qualitative, revolutionary change, the socialization.²⁹

Such a transformation did not occur. Indeed, in the 1980s, Europe retrenched on government ownership. Nonetheless, the international community followed the Soviet lead on the issue of economic opportunity.

Trading as a Governmental Function

As governments in the West came to assume a greater role in economic matters, they were pressed by the Soviet Union to accept its even greater role. The Soviet government operated the Soviet economy through companies set up by the state. For import and export, it set up specialized companies to import products for state-owned companies, or to purchase products from them for export. This system of state-owned companies and centralized foreign trade was also adopted by the other Eastern European countries allied with the Soviet Union.

This system of trade presented significant problems of accommodation with the existing system of international trade. At first, Western governments refused to deal with Soviet state-owned companies. When the Allies lifted their naval blockade of Soviet Russia in 1920,

they indicated a willingness to let their companies trade, but not with Soviet state-owned companies. Instead, the Allies would trade only with Russian cooperatives, which were privately operated and generally hostile to the Bolsheviks. The Allies hoped to weaken the Bolshevik government by trading only with these private entities.³⁰

By the mid-1920s, however, the Soviet government set up trade delegations within its diplomatic establishments abroad. In the United Kingdom and United States, it set up corporations under local law to conduct trade. Foreign states accepted these institutions, which began to buy and sell in those markets.³¹ By the 1930s, the Soviet government moved to a network of state-owned export-import companies, and Western governments acquiesced in letting them buy and sell in their territory.³²

The Soviet government took the position that state-owned companies enjoyed immunity from suit, just as governments had traditionally enjoyed immunity from suit.³³ The Western governments not only questioned that immunity but sought to view a state-owned company as responsible for any and all debts of the state that had established it.

Eventually Western governments came to recognize state trading to the extent of accepting dealings with state-owned export-import companies as operations of those companies alone, with the company only being liable for its obligations. In a case involving Cuban state-owned companies, heard in the House of Lords, it was said, "State-controlled enterprises, with legal personality, ability to trade and to enter into contracts of private law, though wholly subject to the control of their state, are a well-known feature of the modern commercial scene. The distinction between them, and their governing state, may appear artificial: but it is an accepted distinction in the law of England and other states."³⁴ As to commercial transactions of state-owned companies, the court said, "the commercial transaction was not that of the Cuban state, but of an independent state organisation. The status of these

organisations is familiar in our courts, and it has never been held that the relevant state is in law answerable for their actions.”³⁵

Citing, among others, the example of the Soviet state-owned companies, the U.S. Supreme Court similarly said, “Increasingly during this century, governments through the world have established separately constituted legal entities to perform a variety of tasks.”³⁶

Equality Comes to the Family

THE SOVIET INSISTENCE ON THE EQUALITY OF WOMEN AND men was not without consequence in the West. The Russian family code of 1918 had questioned the patriarchal character of Western family law. With the Bolshevik Revolution and the challenge issued by Soviet law as prods, Western governments gradually introduced elements of gender equality into domestic relations law. The twentieth century witnessed a fundamental change in legal regulation of the marital relationship and in gender roles in society.

Marriage and divorce, wrote Berman, became “largely a consensual matter, while parental power over children has been substantially reduced. As the family has been left more and more to its own devices, social relations of race and class and sex have been more and more subjected to legal restraint, in order to prevent exploitation.” These changes, wrote Berman, were “associated partly with the socialist movement.”¹

Governments intervened more forcefully in the family relationship; through administrative and criminal law they dealt with such problems as child neglect, or physical or sexual abuse within the family.² Governments took responsibility, to a degree, for the well-being of the family. In Spain, a constitutional provision stated, “Public authorities shall assure the social, economic and legal protection of the family.”³

In the years following the Bolshevik Revolution, European states gradually brought their family law statutes into line with indicated features of the 1918 Russian family code. As in the Soviet concept, marriage in the West became a union entered at the will of the parties (rather than that of their relatives), and which could be dissolved by either of them.

Freedom of divorce became accepted.⁴ In Western law, grounds were required to dissolve a marriage. This flowed from the idea that marriage was a contract entailing certain rights and obligations. A spouse who violated one of these obligations could be sued by the other for divorce. The Soviet legislation was the first to posit that marriage could be ended when one or both spouses no longer wanted it to continue. The concept of grounds vanished. Throughout the West, legislation came to permit divorce, sometimes called dissolution, simply at the request of one or both spouses.

The radical departures in Soviet family law provided ammunition to the social democrat parties of Europe in their promotion of gender equality. The Austrian Social Democrat Party devoted one section of its Program of Linz (1926) to the “woman question,” calling for abolition of all gender-discriminatory laws.⁵

In family law, the traditional patriarchal approach faded. In Sweden, the Marriage Act of 1920 put the spouses on the same legal footing, replacing the earlier concept that the husband was the guardian of the wife.⁶ The legal disabilities of woman as wife were gradually eliminated. By a law of 1942, a woman in France was permitted to choose a profession without prior consent of her husband.⁷ Laws began to allow a woman to keep her own surname, and references to the husband as head of the family began to disappear. Gender equality began to appear in constitutions as a right.⁸

Laws on nationality were changed to make a woman’s nationality independent of that of her husband. The issue came to be viewed, as it had been in the early Soviet legislation, as a matter of equal rights.

“Credit for introducing this idea,” wrote an early analyst of Soviet international practice, “belongs to the Soviets.”⁹

The United Nations drafted a treaty on the subject of nationality, requiring states to eliminate the automatic change of a woman’s nationality upon marriage: “Each contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.” If a husband renounced his nationality or were naturalized in a new country, his wife’s nationality would not be altered, unless she took action to bring it about.¹⁰

A treaty on women’s rights viewed a woman’s nationality situation as a human rights issue. The Convention on the Elimination of All Forms of Discrimination Against Women required states to “grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.”¹¹

The International Covenant on Civil and Political Rights, adopted in 1966, called for equality between women and men “during marriage.”¹² The committee that monitors the Covenant said that “this equality extends to all matters” arising from the spousal relationship, “such as choice of residence, running of the household, education of the children and administration of assets.”¹³

The Convention on the Elimination of All Forms of Discrimination Against Women, which the Soviet Union actively promoted, required governments to observe equality in many of the ways called for by the 1918 Russian family code. The Convention, in provisions that could have been written by Kollontai, guaranteed legal equality in the marital relationship. It required states to provide “the same rights and responsibilities during marriage and at its dissolution.” Thus, any law that

viewed the husband as head of the family would violate the human rights of women. So too would any law that rendered divorce more accessible to men.

The Convention guaranteed “the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.” As to property rights, it guaranteed “the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.”¹⁴ Women and men are to be accorded “the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.”¹⁵ This litany of provisions on equality of women touched issues that appeared first in the law in the early Soviet family legislation. By the late twentieth century, virtually the entire array of reforms reflected in the 1918 Russian family code had been accepted in law in the West.

Women in Public Life

Reform also came with regard to the status of women outside the family. Alexandra Kollontai claimed already in 1927 that the Soviet legislation had impacted the status of women in the West. In that year, Kollontai wrote an essay she titled “What October Gave Woman in the West.” “October” was shorthand for the Bolshevik Revolution of October 1917. The complex of measures instituted in Soviet Russia, Kollontai said, had altered the view of woman’s role in society, not only in Russia, but around the world. A woman who earns independently was the feature she found distinctive of what she called the “new woman.” “But for October,” she wrote, the view would still prevail that . . . the place of woman is in the family, behind a breadwinning husband.”

Kollontai said, “only the October revolution recognized publicly by its legislation, by the whole new Soviet order, that once a woman

becomes a worker in society, she must be seen as an active citizen.” Kollontai cited examples to show that this transformation was already being reflected abroad. “In all countries, political activism of women grew in these last ten years in a major way.” Women, Kollontai said, were becoming government ministers and diplomats, and were running businesses.¹⁶

There was a kernel of truth in Kollontai’s claims. Women were beginning to play a role in society outside the home, and legal reforms accompanied the change. Provisions began to appear in constitutions to guarantee women legal equality in all aspects of life.

The Soviet constitution of 1936 proclaimed gender equality. In 1946, France’s new constitution did the same.¹⁷ Other countries began to include equality of the sexes in their legislation. Statutes were instituted and programs initiated to ensure equal pay for women.¹⁸

The Convention on the Elimination of All Forms of Discrimination against Women viewed women’s equality in public life as a human rights issue. It called on states to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country.”¹⁹ States were required similarly “to take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education.”²⁰ As for work life, the Convention called for women to be accorded “the same criteria for selection in matters of employment,” the “right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value.”²¹

Child-Bearing and Rights of Children

THE EARLY SOVIET REFORMS ON PATERNITY AND ADOPTION evoked little reaction abroad. The idea of collective paternity was abandoned in 1926 in the USSR itself, as was the abolition of private-family adoption. Neither idea was seriously considered in other countries. Soviet reforms on child-care, on illegitimate children, and on abortion exerted considerable impact beyond the borders of the USSR.

Laws on these issues underwent a sea change in the middle years of the twentieth century, taking the direction followed by the early Soviet legislation. Communal facilities for child day care came into common use, as an adjunct to the entry of women into the workforce. The status of children born out of wedlock was regularized.

Abortion Policy

In the 1920s, a prohibition against abortion was still the nearly universal rule in the West. Criminal penalties, often with severe punishments, applied to the performance of an abortion. Despite the prohibition, however, abortions were performed, often in improper medical conditions, and this fact helped keep the issue one of great public controversy.

The 1920s saw the abortion issue high on the medical agenda in many countries, and being raised as well as a political issue. The Soviet experience figured heavily. The Soviet decision in 1920 to legalize

abortion “was very important for the abortion debate in other countries.”¹ In Switzerland, leftist parties campaigned in the 1920s to legalize abortion.²

Legalization campaigners pointed to the 1920 Soviet decree to show that legalization was possible. One of the bases for prohibiting abortion was concern that the operation was dangerous to the life of a woman. Figures coming out of the USSR showed that few maternal deaths resulted from the performance of abortions. The Soviet data were widely disseminated.³

The USSR sent delegates to the meetings of the World League for Sexual Reform, held in Berlin in 1921, Copenhagen in 1928, London in 1929, and Vienna in 1930.⁴ The League was a nongovernmental organization opposed to the legal strictures on sexual issues as found in European countries. At the 1929 congress in London, a Soviet film was shown about a young woman getting an abortion. The film, which featured the commissar of health, had been produced to show young women that abortions were available.⁵ At the 1930 congress in Vienna, one delegate, arguing for the decriminalization of abortion, called for “an extension to all the codes, in all the countries, of the new legislation decreed by the USSR on abortion.”⁶

British and American physicians began to visit the USSR to examine the Soviet experience. F. J. Taussig, a U.S. physician, visited in 1930 and devoted a chapter to the Soviet experience in his 1936 book on abortion.⁷ The Soviet experience provided data for the first time on the impact of legalizing abortion. Taussig reported that deaths from back alley abortions had decreased dramatically in Russia.⁸ Deaths of women during the performance of legal abortions by qualified physicians were infrequent. Taussig cited Soviet specialists as reporting one death in 20,000 legal abortions.⁹

This information dramatically altered the abortion debate in the West. “Never before,” Taussig wrote, “in such a short period of time has the world acquired such a fund of information, both medical and social, helping toward a solution of the problem [of abortion].”¹⁰

L. Haden Guest reported in the British medical journal *Lancet* on the low number of maternal deaths in Soviet Russia from abortions. In 40,000 abortions performed over a ten-year period, he said, there had been only two maternal deaths.¹¹

The *Lancet* reported on a 1932 meeting of the Medico-Legal Society in Britain, at which the lawyers favored decriminalization of abortion, while the physicians, fearing medical complications, were opposed. The *Lancet* suggested that the Soviet data might turn the opinions of the physicians. Citing Guest, the *Lancet* editorialized that if the Russian statistics on the safety of properly performed abortions could be confirmed, “they will, from the strictly medical point of view, deserve serious consideration by those planning new legislation appropriate to the outlook and habits of our time.”¹²

Helen Lukis, a British physician arguing in favor of legalization of abortion at a meeting of the British Medical Association in 1933, said that “the legalization of abortion in Russia had created a demand for abortion in England.”¹³ In Britain, the Birkett Committee, set up to study the abortion question, cited the Soviet figures in its 1939 report.¹⁴

Starting in the 1940s, abortion laws in the West began to change. In certain localities of Switzerland, abortion became legally available. East Germany legalized abortion in 1947. After the USSR legalized abortion for the second time in 1955, socialist bloc states followed suit.

In 1967, the British parliament adopted the Abortion Act, which legalized abortion if necessary to preserve the physical or mental health of the woman. Abortions were liberally performed under the Abortion Act, and women from other European countries traveled to England for abortions.¹⁵ In 1973, abortion became available in the United States, by decision of the Supreme Court.¹⁶ By the 1980s, abortion was available in most countries, with some variation. In some countries, abortion was available on demand, at least early in pregnancy. In others, abortion was permitted on statutorily defined grounds, which in some countries were quite limited, but in others were quite permissive.¹⁷

Child-Bearing and Rights of Children

In the determinations made in the West to decriminalize abortion, medical considerations were key. At that period, the Soviet Union was still the only major country where abortion had been widely permitted by law. The Soviet medical experience of the period 1920 to 1936 had shown that if abortion were decriminalized and performed under good hygienic conditions, complications to the mother would be few.

In 1966, the International Covenant on Civil and Political Rights was adopted. Although the Covenant contained no provision on abortion, it included general equality provisions, as well as a provision on the protection of life. In keeping with the strong trend toward legal abortion, the committee that monitors compliance with the Covenant criticized states that prohibited abortion. The committee cited equality grounds, and, in the case of very strict prohibitions, the need to protect the mother's right to life.¹⁸

The motivation for this change in abortion laws in the West was similar to that behind the Soviet policy of the 1920s. There was concern that a prohibition drove abortion underground, often causing physical harm to the woman. There was also concern about the rights of the woman, on a rationale that the woman should be allowed to decide about child-bearing.

Communal Child-Care

When the Soviet government initiated communal day care for children, such a concept was little known. The expectation was that care would be provided by the parents. When both parents sought to work outside the home, and when no extended family was close at hand, the absence of communal child-care created difficulty.

The UN Convention on the Rights of the Child, adopted in 1989, requires states to "ensure the development of institutions, facilities and services for the care of children." The obligation applies in particular to

the children of working parents: “States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.”¹⁹

Child-care facilities came into common use around the world. They came to be viewed as necessary to ensure access to employment for women.

Legitimacy

The Soviet equalization of children, regardless of the marital status of their parents, was noted in Europe, as the issue was debated in the 1920s. At the World League for Sexual Reform, Paul Krusche-Berlin argued in favor of eliminating the legal disadvantages of children born out of wedlock. In support of his position, he pointed out that “only the socialist code of Soviet Russia provides for full equality.”²⁰

Laws on the status of illegitimate children changed, however, only in the middle years of the twentieth century. In France, by a 1972 law, the difference between children born in or out of wedlock was practically eliminated. A new civil code provision stated, “A natural child has in general the same rights and the same obligations as a legitimate child in its relations with its father and mother.”²¹ In Britain, no across-the-board provision was adopted to remove the difference between children born in or out of wedlock, but legislative change was made on a variety of issues. In Britain, by a 1969 law, illegitimate children were placed on a par with legitimate children when parents die intestate. By the same law, a will provision referring to a “child” was to be read to include illegitimate children.²²

Change came quickly in Europe. By 1975, the Council of Europe, an intergovernmental body dealing with human rights, found that a distinction in European legislation between children born in or out of wedlock had faded so much that it was able to adopt a treaty ensuring

equality for children born out of wedlock. The Convention on the Legal Status of Children Born Out of Wedlock required parents to bear “the same obligation to maintain the child as if it were born in wedlock.” The child was to have “the same right of succession to the estate of its father and its mother.”²³

In the United States, the Supreme Court took up the issue. It struck restrictions in the laws of constituent states that had disadvantaged children born out of wedlock.²⁴ The United Nations dealt with legitimacy as a human rights matter. In 1966, the United Nations finalized the International Covenant on Civil and Political Rights, which called for necessary “measures of protection” for a child by “his family, society and the State,” without discrimination based on “birth.”²⁵ The committee that monitors the Covenant said that discrimination based on “birth” protects children born out of wedlock.²⁶ The committee criticized countries that did not provide full equality to children born out of wedlock.²⁷

The UN Convention on the Rights of the Child outlawed discrimination against children on a variety of grounds, including any “other status.”²⁸ That provision was understood to prohibit discrimination against children born out of wedlock.²⁹ The committee that monitors that Convention criticized states that did not ensure full equality.³⁰

Childbirth Leave

The issue of parental leave attracted attention. The International Labor Organization was, as indicated in Chapter 9, formed out of concern over worker agitation inspired by the Bolshevik Revolution in Russia. As one of its first issues, the ILO dealt with childbirth leave. In November 1919, it adopted a treaty on the subject. Applicable to both private and public employment, the treaty gave a woman worker a right to leave for six weeks before, and six weeks after, childbirth, and to “benefits sufficient for the full and healthy maintenance of herself and her child,”

to be paid either from public funds or from a social insurance fund. The woman was protected from being dismissed while on leave.³¹

The treaty was implemented in domestic legislation only quite gradually. By the late twentieth century, however, paid childbirth leave, with a prohibition against dismissal, became accepted practice.³² Child-care also came to be provided. A combination of parental leave and child-care availability, as provided for example, in Swedish law, came to be widely viewed as necessary to allow women workers to bear children without falling behind male peers.³³ Women would be able to take time with a child in its infancy and then find day care to allow return to work.

As a guarantee for continued employment, the Convention on the Elimination of All Forms of Discrimination Against Women required states to prohibit “dismissal on the grounds of pregnancy” and to introduce “maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances.”³⁴

By the late twentieth century, parental leave had become general practice in Europe.³⁵ The United States adopted parental leave legislation in 1993.³⁶ In 1996, the European Union’s Council issued a directive on parental leave, requiring member states to provide for it.³⁷ The pattern set by Soviet law became the model for the Western world.

Racial Equality

FOR THE UNITED STATES, LEGALIZED RACIAL SEGREGATION caused problems as an issue that could be exploited by its adversaries. During World War II, both Japan and Germany focused on segregation in their wartime propaganda against the United States. In the years following World War II, criticism came from an array of nations, even some that were friendly to the United States. Lynchings of Blacks in the American South, prevalent at that period, drew particular criticism.

In the United States–Soviet battle for hearts and minds around the world, segregation became a focus of the Soviet critique of American capitalism, and a source of embarrassment for the United States. The Soviet media highlighted not only lynchings, but the economic situation of Black tenant farmers, and the poll tax, which kept many African-Americans from voting.¹

The American South at the United Nations

At the newly created United Nations, the USSR promoted the establishment within the Commission on Human Rights of a subcommission that would focus on race issues.² The Subcommittee on Prevention of Discrimination and Protection of Minorities began work in 1947.³ Dean Rusk, who, as a Department of State officer, represented the

United States at the United Nations, conveyed to Washington the risk that the Subcommittee presented for the United States: "This Subcommittee," he wrote in a confidential memorandum, "was established on the initiative of the USSR, and there is every indication that that country and others will raise questions concerning our domestic problems in this regard."⁴

In 1946, the National Association for the Advancement of Colored People (NAACP) had petitioned the Commission on Human Rights to examine segregation in the United States. When the Subcommittee was established in 1947, the Soviet Union, as a member of the Subcommittee, asked that it address the petition.⁵ The NAACP, in submitting the petition in 1946, had calculated that the Soviet Union would press the issue, and that the resulting publicity might force the U.S. federal government to address segregation, even if the United Nations took no action.⁶

The Soviet Union took up the petition and used it to criticize the United States.⁷ The U.S. delegate parried the Soviet jabs by saying that the segregation issue was being considered by the federal government, and that the Soviet Union itself suppressed rights.⁸ The Soviet delegate to the Subcommittee drafted a resolution that asked that it "consider at its meetings the petition presented to the United Nations twice since 1946 by 15 million Negroes residing in the United States of America, who are subjected to discrimination on racial grounds."⁹

Apart from the merits of the NAACP petition, members of the Subcommittee were uncertain that the Subcommittee, or the Commission on Human Rights, should become a tribunal to hear human rights petitions. The UN Charter gave the Commission no such role. The Subcommittee rejected the Soviet proposal on that basis, most members stating that the Subcommittee should not focus on "one particular group of coloured people."¹⁰

Even though the United Nations took no action, the very submission of the petition and the attention it received served the purpose

the NAACP sought. Concern that the Soviet Union was winning the propaganda war motivated politicians in the United States. William O. Douglas, a Supreme Court justice who would soon sit on the school desegregation case, viewed racial segregation in the United States as an obstacle to winning the Cold War. Douglas publicly campaigned on the issue. “I think that the great issues of the day,” he told a convention of the Amalgamated Clothing Workers of America in 1952, “are, who are going to get the hearts and the minds of the peoples of the world? Those of us who stand for the things that your group stands for – freedom and justice and equality – are the bulwark against any form of totalitarianism, the most virulent of which is Communism.” Douglas denounced what he called “the provincialism of prejudice, racial prejudice, prejudice against new and challenging ideas.” America, he said, must approach the problems of the world “without racial lines, without discrimination.”¹¹

When the Supreme Court of the United States took on the issue of segregated schools in the case of *Brown v. Board of Education*, the Soviet criticism became part of the discussion.¹² The federal government sided with the Black parents and schoolchildren, urging the Court to outlaw segregation in the schools. The federal government was not a party to the lawsuit, but the Attorney General filed a brief in the case for the federal government as a friend of the court.

The U.S. Brief to the Supreme Court

By the rules of the Supreme Court, a friend of the court must explain why it has an interest. The Attorney General said first that the federal government had an obligation to protect civil rights, and second, that racial segregation in the United States had become an international issue for the federal government: “It is in the context of the present world struggle between freedom and tyranny,” he wrote, “that

the problem of racial discrimination must be viewed. The United States is trying to prove to the people of the world, of every nationality, race, and color, that a free democracy is the most civilized and most secure form of government yet devised by man. We must set an example for others by showing firm determination to remove existing flaws in our democracy.” The reason the United States was trying to prove the benefits of a free democracy was the Cold War confrontation with the Soviet Union.

The Attorney General next wrote, “Racial discrimination furnishes grist for the Communist propaganda mills, and it raises doubts even among friendly nations as to the intensity of our devotion to the democratic faith.”¹³ Then the Attorney General recited that he had solicited a letter from Dean Acheson, Secretary of State, to demonstrate to the Court just how racial segregation in the United States impacted foreign relations. The Attorney General quoted from the letter. Acheson first mentioned that he had written a letter to another federal agency in 1946 explaining that racial discrimination in the United States “created suspicion and resentment in other countries.”¹⁴

Then Acheson wrote, “During the past six years, the damage to our foreign relations attributable to this source has become progressively greater. The United States is under constant attack in the foreign press, over the foreign radio, and in such international bodies as the United Nations because of various practices of discrimination against minority groups in this country.”¹⁵ The “past six years,” of course, was the time since the United Nations had been founded, and during which the Soviet Union had supported the NAACP petition at the United Nations and had promoted creation of a subcommission on race discrimination in the UN Commission on Human Rights.

Acheson referred to these Soviet efforts at the United Nations. “As might be expected,” he wrote, “Soviet spokesmen regularly exploit this situation in propaganda against the United States, both within the United Nations and through radio broadcasts and the press, which reaches all corners of the world. Some of these attacks against us are

based on falsehood or distortion; but the undeniable existence of racial discrimination gives unfriendly governments the most effective kind of ammunition for their propaganda warfare.”¹⁶

Then Acheson acknowledged that the Soviet Union’s efforts were having an impact: “The hostile reaction among normally friendly peoples, many of whom are particularly sensitive in regard to the status of non-European races, is growing in alarming proportions. In such countries the view is expressed more and more vocally that the United States is hypocritical in claiming to be the champion of democracy while permitting practices of racial discrimination here in this country.”¹⁷

Next Acheson explained that school segregation in particular was hurting the United States: “The segregation of school children on a racial basis is one of the practices in the United States that has been singled out for hostile foreign comment in the United Nations and elsewhere. Other peoples cannot understand how such a practice can exist in a country which professes to be a staunch supporter of freedom, justice, and democracy. The sincerity of the United States in this respect will be judged by its deeds as well as by its words.”¹⁸

Finally, Acheson wrote that the United States was at risk of losing the Cold War over racial segregation: “Although progress is being made, the continuance of racial discrimination in the United States remains a source of constant embarrassment to this government in the day-to-day conduct of its foreign relations; and it jeopardizes the effective maintenance of our moral leadership of the free and democratic nations of the world.”¹⁹

The Attorney General returned to this theme in the concluding section of the brief. First, he said that racial segregation was a “challenge to the sincerity of our espousal of the democratic faith.” Then he wrote, “In these days, when the free world must conserve and fortify the moral as well as the material sources of its strength, it is especially important to affirm that the Constitution of the United States places no limitation, express or implied, on the principle of the equality of all men before the law.”²⁰ The Attorney General ended the brief by quoting President

Franklin Roosevelt on the importance of setting an example for the peoples of Soviet bloc countries: “As the President has stated,” he wrote, “If we wish to inspire the people of the world whose freedom is in jeopardy, if we wish to restore hope to those who have already lost their civil liberties, if we wish to fulfill the promise that is ours, we must correct the remaining imperfections in our practice of democracy.”²¹

The Attorney General’s return to the Cold War theme to conclude the brief emphasized that the Cold War aspect was key to his view of the need to outlaw school segregation.

Other Race Issues in the United States

When the U.S. Supreme Court ruled on school segregation, the federal government used the decision triumphantly to counter the Soviet criticism on racial discrimination. The government-run Voice of America radio featured the Court’s decision prominently in broadcasts to Eastern Europe and China. The *New York Times* reported that the Voice of America provided background on the race situation and commentary to show how the status of African-Americans was improving: “Both the background broadcasts and the commentaries receive top priority on the Voice’s programs. They will be beamed possibly for several days, particularly to Russian satellites and Communist China.”²² The Republican National Committee issued a press release, saying that the decision “falls appropriately within the Eisenhower Administration’s many-frontal attack on global Communism.”²³

The centrality of Cold War concern in the federal government’s position on school segregation was not lost on the proponents of segregation. Herman Talmadge, Governor of Georgia, criticized the federal government for opposing segregation to counter Soviet criticism: “we have shaped our national policy,” he complained, “by trying to please the Communists.” Talmadge said that the United States should

Racial Equality

disregard the criticism: “Who cares what the Communists say! Who cares what *Pravda* prints?”²⁴

Brown v. Board of Education had implications in the United States well beyond the field of education. It was the first major court case against legalized segregation. It eliminated the prior understanding that separation of the races was lawful so long as equality was maintained. It presaged judicial and social change in other contexts. Even beyond race issues, the move toward racial equality gave impetus to rights recognition in the United States across a range of issues. It gave impetus to efforts at equality for women with men, efforts that became reflected in legislation. It also gave impetus toward eliminating the legal disabilities of children born out of wedlock, recognition of equal legal status for homosexuals, and recognition of the rights of persons with physical or mental disabilities.

Law as Teacher

In all these issues, reform by legislation or judicial decree could be effective only if the reform was ultimately accepted by society. Berman argues that one aspect of Soviet law that left a mark in the West was its emphasis on using law and legal process to educate. “Not just in Russia,” he writes, “but throughout the West, the law of the state has come to play the role of parent or teacher in nurturing attitudes officially considered to be socially desirable.”²⁵ That aspect of law was apparent in the debate over equality in the United States. Could law change attitudes? Could the passage of a statute mandating equality in the work place, or in education, impact the way society thinks about such matters?

The U.S. Supreme Court was at pains in deciding the school desegregation case to achieve unanimity among the judges, avoiding any dissents. The judges realized that the decision could be successfully

implemented only if the public changed its views about race in education and came to accept integrated education.

A concept that society could be educated via legislation was behind civil rights laws when they came to be adopted by the U.S. Congress after *Brown v. Board of Education*. Legislation was passed in the expectation that attitudes would change to conform to the law's purpose.²⁶ Laws forbidding employers to discriminate in hiring decisions could not achieve their aim unless employers came to accept the proposition that they must be color-blind when they hire.

This notion, too, had been pioneered by the Bolsheviks. Their early legislation, in particular that on equality of the sexes, was programmatic. Women and men were far from equal in the Russia of 1917. Proclaiming them, by legislation, to be so could have little impact unless equality came to be accepted at the social level. This was an aspect of Soviet law that did not come from Marxism. Social phenomena were supposed to be a function of economic reality. If that is so, a person's conceptions are a product of the economic environment, not of what is drummed into the person's head by others. Values are, per Marxism, a product of social reality.

Yet, as legal processes came to be an accepted part of life in the USSR, the Soviet government used them to explain to litigants and to the public how one should act in order not to repeat the difficulties that had culminated in the litigation. A worker who stole from his factory was admonished to promote the common good by contributing to the factory's production, rather than seeking his own financial enrichment. This approach was followed even though it might have been the economic situation that contributed to the commission of the crime. The item the worker stole may have been in short supply in the market place because of production deficiencies, thereby making the product dear in the black market. That might have been how Marx would have analyzed the worker's offense. Yet in Soviet law, the effort was made to use the law to educate. The same idea was used in the United States regarding equality laws.

Human Rights Enforcement

The Soviet initiative to create a subcommission on discrimination in the Commission on Human Rights was to have a significant, if unintended, consequence beyond the issue of race. Eventually, the question of whether the Commission or its Subcommission could entertain petitions alleging a rights violation was resolved. In 1967, the UN Economic and Social Council, the parent body of the Commission on Human Rights, gave both the Commission and the Subcommission the power to consider petitions from individuals, or groups, alleging a rights violation.

In a sharp break with the prior position, the Economic and Social Council “authorize[d] the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities . . . to examine information relevant to gross violations of human rights and fundamental freedoms, as exemplified by the policy of *apartheid* as practised in the Republic of South Africa and in the Territory of South West Africa.”²⁷

Significantly, as the quoted language indicates, the jurisdiction of the Subcommission was to include any and all human rights violations, whether or not related to race discrimination. The only limitation was that a petition must allege persistent or widespread abuse of rights, rather than an isolated instance. In 1970, the Subcommission’s powers were elaborated in greater detail by the Economic and Social Council. ECOSOC provided for a procedure whereby the Subcommission would form a working group to consider petitions, and then pass on those it found meritorious to the Commission. In turn, the Commission could consider them and pass them along to ECOSOC. ECOSOC could adopt a resolution condemning the state responsible.

In this way, a mechanism was established whereby major rights violations could be brought to the attention of the UN human rights organs, discussed there, and a decision taken about them. In recognition of the broadened mandate, the name of the Subcommission was changed

in 1999 from Subcommittee on Prevention of Discrimination and Protection of Minorities, to Subcommittee on the Promotion and Protection of Human Rights.

Thus, the Soviet effort to create a forum in which it could criticize the United States turned into a forum for the protection of human rights. This impact was unintended, because the Soviet Union was reluctant to admit a role to the United Nations in monitoring human rights performance generally by states. Its promotion of the creation of the Subcommittee in 1946 and 1947 ran counter to its concern that UN enforcement infringed the sovereignty of the states that would be monitored.

The USSR's concern was based on its fear that UN organs, being dominated by the West, would treat it and its allies unfairly. Soviet jurists disputed even the basic principle of human rights law, as that body of law emerged in the mid-twentieth century – namely, that the individual is a subject of international law. Soviet jurists said that legal relations in international human rights ran only between states, a proposition that seemed to negate any access for individuals to international enforcement.²⁸ Thus, giving the Subcommittee whose creation the USSR had promoted a role of entertaining complaints from individuals, and moreover, broadening its jurisdiction beyond the race relations realm, ran counter to the Soviet position and potentially opened the possibility of complaints by individuals even against the USSR. Nonetheless, the initiative the USSR took in 1946 opened the door to human rights enforcement by the United Nations.

Crime and Punishment

SOVIENT PENAL LAW OF THE 1920S STRESSED, AS WE SAW, reintegration into the social order on a basis that would have the individual become a contributing member, rather than one who acted at cross-purposes to the goals of the society. The idea that criminal penalties should serve rehabilitation instead of, or in addition to, retribution and deterrence gained strength in the West in the years following the Bolshevik Revolution. In 1926, the International Association of Penal Law, representing European penalists, called for a move away from punishment as retribution. European penal law began to focus on the individual and reintegration or re-education.¹

Soviet practice gave a major boost to the concept that crime is a product of social causes and led to a re-evaluation of traditional techniques in dealing with crime. The idea that crime was only in part associated with moral shortcomings of the individual led to a search for social causes of crime and an effort to eliminate them. The move to welfarism was prompted in part by concern over the crime that was generated by a society in which large numbers of poor were left to fend for themselves. Crime, wrote one analyst of the welfare state, "is a sign of sickness in the individual and sickness in the society that breeds him."²

Soviet law may have exerted an influence as well in regard to the conception of how law influences human conduct in the criminal process.

Soviet judges were regarded as playing a role, beyond determining rights and obligations, of educating the community about proper conduct.³ Soviet courts at times held trials at local factories or in public auditoriums, to show the public how disputes could be settled or how persons were called to account for misdeeds. This use of law and legal processes has been termed “parental.”⁴

Courts everywhere perform an educational function in society, whether or not the role is recognized explicitly. Features of parentalism were seen by the American legal philosopher Karl Llewellyn as having been accepted in American criminal trials. Llewellyn suggested that law in the United States in mid-twentieth century was “mov[ing] steadily in a parental direction.” Llewellyn referred in particular to a tendency to consider the entirety of the life of an accused in setting punishment – examining the person’s past.⁵ The movement in the United States toward indeterminate sentencing also focused on the individual, to allow for release once the convicted person stood a good chance of being reintegrated into society.

Western law also followed Soviet criminal law by eliminating many morals offenses. Laws on sodomy and prostitution were changed along the lines taken by Soviet law in the 1920s.

Sodomy

The Soviet repeal in 1920 of a prohibition of sodomy attracted considerable attention in Europe. The 1920s was a time when sodomy legislation in Europe was being challenged. Batkis’ tract *Sexual Revolution in Russia* was translated into German.⁶ Germany was the center of reform efforts in Europe on sodomy laws. Dr. Batkis attended meetings of the World League for Sexual Reform as a Soviet government delegate and elaborated on Soviet policy.⁷ In Copenhagen, at a League meeting in 1928, Batkis explained that in penal legislation, the Soviet position was that only acts that harm others should be criminalized.⁸

The League promoted abolition of sodomy laws. Another Soviet delegate was Dr. Nikolai Pasche-Oserski, a professor of law at Kiev University, who explained to a League conference that the Soviet approach on sodomy was to view it as a diseased condition, but not to punish it as a crime.⁹

In 1930, the *Large Soviet Encyclopedia*, in its entry “Homosexuality” contrasted the Soviet legislative approach to that of other countries and chided the West for retaining sodomy legislation. Referring to the reform movement in Europe, the *Encyclopedia* stated that “in the advanced capitalist countries, the struggle for the abolition of these hypocritical laws is at present far from over.” The entry mentioned the reform efforts in Germany “to abolish the law against homosexuality.”¹⁰

Although, as noted, sodomy was recriminalized in the USSR in 1934, change came in the West. The British government appointed a committee (Wolfenden Committee) to study the matter. It proposed “that homosexual behavior between consenting adults in private should no longer be a criminal offence.”¹¹ Parliament repealed the sodomy law in 1967, stating that “a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years. . . .”¹²

In Europe, one state after another repealed sodomy provisions in penal codes. In the United States, the American Law Institute proposed decriminalizing “private homosexuality not involving force, imposition or corruption of the young.”¹³ Some states in the United States followed this proposal.

Action at the international level reinforced reform in penal codes. Guarantees on sexual equality and privacy in the International Covenant on Civil and Political Rights were read to prohibit sodomy laws.¹⁴ The European Union required repeal of sodomy laws as an indication of good human rights practice, needed for entry of new states into the EU.¹⁵ In the United States, sodomy laws that continued to exist in certain states were ruled unlawful by judicial decision.¹⁶ In

the Western world, sodomy laws became a thing of the past. Reform came from the same motivation that underlay the 1920 Soviet repeal of sodomy laws – namely, from an evolving analysis of homosexuality that resulted in a diminution of the moral condemnation that prevailed in the nineteenth century.

Prostitution

By the early twentieth century, as seen in Chapter 5, most European countries had systems of legalized, regulated prostitution. International treaties focused on suppressing international trafficking for purposes of prostitution but did not address a state's own policy on prostitution.¹⁷ In the 1920s, however, following the Soviet Russian lead, a few of them abolished their regulatory schemes, and others followed suit later.¹⁸ Increasingly, specialists and governments came to the view that the system did not stop the spread of venereal disease. The League of Nations studied the issue, and there, too, the predominant thinking was to end regulated prostitution.¹⁹

Gregory Batkis, as a Soviet delegate to meetings of the World League for Sexual Reform, explained the Soviet approaches to the issue of prostitution, and in particular the Soviet network of prophylactoria.²⁰ Batkis described the Soviet policy at the League's 1929 congress in London: "combating of prostitution but not of the prostitute. The wide application of protective measures of female labour, the protection of the rights of the unprotected working woman and the helpless mother, and, together with this, the strictest prosecution of all attempts at procurement and the exploitation of prostitutes."²¹

After World War II, the United Nations continued the work of the League of Nations on prostitution, and the Soviet government became a prime sponsor there of a treaty in which states would agree to abolish regulatory schemes. In 1949, the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

was adopted, requiring states to punish the acts of procuring for prostitution, keeping a brothel, or maintaining a registry of prostitutes.²² These requirements meant an end to legalized brothels, hence to the regulated prostitution that had prevailed before World War I. Seventy-nine states adhered to the Convention.²³

The Convention did not specify that states must forego outlawing the act of engaging in prostitution, but few states had such a criminal prohibition.²⁴ The Convention, following the Soviet lead, took the view that prostitutes were victims rather than culpable parties. It said that states ought “to take or to encourage, through their public and private education, health, social, economic and other related services, measures for the prevention of prostitution and for the rehabilitation and social adjustment of the victims of prostitution.”²⁵

As international measures were discussed in regard to prostitution, the Soviets kept pressure on the West on the issue. The Soviet government was able to maintain high levels of employment after World War II.²⁶ In 1951, when the United Nations circulated a questionnaire about prostitution, the Soviet delegate indicated that there was no need for the Soviet Union to fill out the form, because there was no prostitution to report.²⁷ In 1954, when the Soviet government signed an international treaty directed against prostitution, it filed a declaration stating, “In the Soviet Union the social conditions which give rise to the offences covered by the Convention have been eliminated.”²⁸

The Soviet government could chide the West for being less successful in curbing prostitution. A 1955 entry on prostitution in the *Large Soviet Encyclopedia* recited, “The roots of prostitution lie in inequality and lack of rights for women, their significantly lower salaries, in unbearable conditions of poverty and enslavement of the workers, in unemployment.”²⁹

In Britain, prostitution law was reviewed by the Wolfenden committee, which was also tasked with proposing policy on sodomy. The committee’s 1957 report was accepted by Parliament as the basis for law reform on prostitution. The committee accepted the Soviet view that

economic circumstance was a causal factor in prostitution but denied that such causation operated in the Britain of the 1960s:

[W]hatever may have been the case in the past, in these days, in this country at any rate, economic factors cannot account for it to any large or decisive extent. Economic pressure is no doubt a factor in some individual cases. . . . But many women surmount such disasters without turning to a life of prostitution. It seems to us likely that these are precipitating factors rather than determining causes, and that there must be some additional psychological element in the personality of the individual woman who becomes a prostitute.³⁰

As women's rights gained more attention in treaty law, the view of the prostitute as victim was reiterated. The Convention on the Elimination of All Forms of Discrimination Against Women required states to take "all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."³¹

In the second half of the twentieth century, the system that came to predominate in prostitution policy was in line with the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others. The United States did not join the Convention but remained in a minority of states that penalized the act of engaging in prostitution.³² In most nations of the West, however, the Soviet approach to the control of prostitution found resonance. The Soviet stance was replicated by most Western states when they moved to eliminate legalized, regulated prostitution.

PART THREE

THE BOURGEOIS INTERNATIONAL ORDER

Equality of Nations

THE SOVIET GOVERNMENT'S CALL TO DEPENDENT PEOPLES could not have come at a worse time for the European powers. World War I was about to come to an end, and the Allies, led by Britain and France, were occupying the vast Ottoman Empire in the Middle East, plus the colonial holdings of Germany in Africa. By secret agreement, Britain and France had divided up some of this territory between them. The Soviets denounced the secret agreements and criticized Britain and France for colonizing other peoples of the world. In a number of nominally independent Middle Eastern and Asian countries, the Western powers enjoyed so-called extraterritorial rights. This practice was under severe criticism in those countries, and the Soviets joined the chorus of denunciation. The Soviet stance on these matters became a factor in shaping the post-war world order.

Public Registration of Treaties

As we saw in Chapter 6, the Soviet government criticized the secret treaties by which the European powers parceled out the territory of the “less civilized” peoples. The Soviet publication of the World War I era secret treaties created a firestorm. Public opinion was “deeply shocked” by the revelation of secret dealings at odds with postures

the states were taking in public.¹ Nongovernmental groups lobbied the British government, demanding “an end to secret diplomacy and control of foreign policy by Parliament.”²

The public reaction to the Soviet revelations had a “profound effect” on U.S. President Woodrow Wilson.³ “[T]his feeling found expression in the first of President Woodrow Wilson’s Fourteen Points.”⁴ These were the “points” for which, Wilson said, the United States was fighting in the World War. The very first on the list called for an end to secret treaties: “open covenants of peace, openly arrived at, after which there shall be no private international understandings of any kind, but diplomacy shall proceed always frankly and in the public view.”⁵

The secret treaty issue was high on the agenda at the Versailles peace conference. Europe’s leaders were impacted in the same way as Wilson by the disclosures of secret treaties. In drafting a Covenant for the League of Nations, the delegates included openness of international relations as one of only four principles they listed as essential ingredients for international peace. The preamble to the Covenant recited, “In order to promote international co-operation and to achieve international peace and security . . . by the prescription of open, just and honourable relations between nations.”⁶

To ensure compliance, the drafters wrote a provision as Article 18 of the Covenant, requiring member states to register all treaties with the League: “Every treaty of international engagement entered into hereafter by any Member of the League shall be forthwith registered with the Secretariat and shall as soon as possible be published by it. No such treaty or international engagement shall be binding until so registered.”⁷

Article 18 was the direct result of the Soviet publication of the World War I secret treaties. “Widespread dissatisfaction provoked during the World War by the publication of a number of secret treaties,” reported a leading treatise on international law, “found expression in Article 18 of the Covenant.”⁸ Soviet jurists justifiably claimed credit for the Soviet

role: “[R]egistration of treaties in international law,” said a Soviet treatise on international law, “came about from pressure resulting from the Soviet government’s publication of secret treaties.”⁹

When the United Nations replaced the League of Nations, a comparable provision was included in the UN Charter: “Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretary and published by it.” As a penalty for noncompliance, the Charter provided, “No party to any such treaty or international agreement which has not been registered . . . may invoke that treaty or agreement before any organ of the United Nations.”¹⁰

Secret treaties thus were outlawed. The registration and publication of treaties became accepted international practice. The League of Nations published the treaties it received as the *League of Nations Treaty Series*. The United Nations publishes the treaties it receives in the *United Nations Treaty Series*.

Capitulations

A number of Asian and near eastern governments came to Versailles to plead for an end to the regime of capitulations. The fact that the new Soviet government so stridently attacked the regime, as we saw in Chapter 6, made it difficult for European leaders to ignore supplicants.

Siam urged the Allies to end extraterritoriality in its territory.¹¹ China asked for an end to capitulations by arguing that its domestic laws had improved to the point that Europeans need not fear Chinese justice. It also argued that, as a practical matter, the system was not working well in China.¹² Persia, too, argued at Versailles that it had improved its legal system. It explained that it had reformed its judiciary along French lines: “Consequently, there is no reason,” it said, “to

continue indefinitely the peculiar situation created in favor of foreigners in Persia and the time has come to terminate it.”¹³

The Soviet government continued to denounce capitulations as a violation of the rights of those countries where the major powers maintained such regimes.¹⁴ It kept up the pressure on the Western powers by concluding treaties with the countries with which the tsar had maintained a capitulatory regime.

By a 1921 treaty of alliance with Turkey, the Soviet government declared: “The Government of the R.S.F.S.R., holding that the capitulations regime is incompatible with the full exercise of sovereign rights and the national development of any country, declares this regime and any rights connected therewith to be null and void.”¹⁵

With Persia, a 1921 treaty provided that Russians would be subject to Persian courts: “By virtue of the communication from Soviet Russia dated June 25, 1919, with reference to the abolition of consular jurisdictions, it is decided that Russian subjects in Persia and Persian subjects in Russia shall, as from the date of the present Treaty, be placed upon the same footing as the inhabitants of the towns in which they reside; they shall be subject to the laws of their country of residence, and shall submit their complaints to the local courts.”¹⁶

When Turkey came to negotiating peace with the Allies, the Allies initially tried to retain the capitulatory regime, but in the treaty that was finally concluded, the regime was abolished: “Each of the High Contracting Parties hereby accepts, in so far as it is concerned, the complete abolition of the Capitulations in Turkey in every respect.”¹⁷ The United States, which was not party to that treaty, ended its extraterritorial rights in Turkey in 1933, by a bilateral treaty with Turkey.¹⁸

The last major country in which regimes of capitulations continued was China. The Soviet government unilaterally declined Russia’s extraterritorial rights in China and formalized that situation in a Soviet–Chinese treaty of 1924, which provided, “The Government of the Union of Soviet Socialist Republics agrees to relinquish the rights of extraterritoriality and consular jurisdiction.”¹⁹ The regime was ended

in 1928 with several European states by treaties with China. Britain and the United States relinquished their rights in China in 1943.

The Mandate System

Whereas capitulations represented only a minor agenda issue at Versailles, the question of the disposition of Ottoman territory and Germany's overseas colonies took center stage. Would the Allies take these territories as colonies? Britain was in occupation of Germany's African territories, and some parts of the Ottoman Empire. France, too, was in occupation of Ottoman territory. Both France and Britain already held large colonial empires. The former German and Ottoman territories would make handsome additions.

The status of the former German and Ottoman colonies was a source of potential future conflict. The peoples of many of those colonies, especially Turkey's colonies, were demanding independence. Britain had promised independence to Arab leaders in return for support in fighting the Ottomans. But after the war, Britain forgot its promise and the Arab leaders felt cheated.

The Soviet call for an end to colonialism put pressure on the Allies. If they took the former German and Ottoman territories as colonies, they would be suppressing demands for independence. The Soviet government called for a "just and democratic peace," a peace "without annexations," by which it meant "without the seizure of the lands of others, without the forcible incorporation of other nationalities." The Soviet government opposed "any incorporation to a large or powerful state of a small or weak nationality without a precise, clear, and voluntary expression of consent" by the nationality, "regardless of when this forced incorporation was accomplished, and regardless of how developed or backward" the nationality might be. And finally, the decree added, "regardless, finally, of whether the nationality lives in Europe or in distant overseas countries."²⁰

Tightening the squeeze on France and Britain, U.S. President Woodrow Wilson was making statements similar to those of the Soviets. Wilson said that one of the Allied war aims was the self-determination of peoples. "Every people has a right to choose the sovereignty under which they shall live," Wilson told the U.S. Congress in 1916. "The small states of the world have a right to enjoy the same respect for their sovereignty and for their territorial integrity that great and powerful nations expect and insist upon."²¹ "No peace can last," he told Congress a year later, "which does not recognize and accept the principle that governments derive all their just powers from the consent of the governed, and that no right anywhere exists to hand peoples about from sovereignty to sovereignty as if they were property."²²

Wilson raised the issue at Versailles. He said self-determination was necessary to a lasting peace.²³ "We are done with annexations of helpless people," Wilson told the conferees, "meant in some instances by some Powers to be used merely for exploitation. We recognize in the most solemn manner that the helpless and undeveloped peoples of the world, being in that condition, put an obligation upon us to look after their interests primarily before we use them for our interest; and that in all cases of this sort hereafter it shall be the duty of the League to see that the nations which are assigned as the tutors and advisers and directors of those peoples, shall look to their interest and to their development before they look to the interest and material desires of the mandatory nation itself." Wilson said that some colonies had already been "lifted into the sphere of complete self-government" and regarded this as "the universal application of a principle."²⁴

Wilson differed from the Soviets on timing for self-determination. The Soviet view was that the colonies should be freed immediately. Wilson was willing to let them be administered for a time by France or Britain, as mandates. Along with France and Britain, Wilson thought that the former German and Ottoman colonies were "backward territories" in need of protection until their populations could decide their own fate.²⁵

The Soviet challenge was more fundamental than Wilson's. Wilson was calling, in effect, for free competition among the capitalist countries in access to the third world. The implication of the Soviet decree was that outside powers should keep hands off.

To the dismay of the peoples of the former Turkish and German territories, the Versailles Conference did not opt for independence. It did not, however, simply let the victorious powers take the territories as colonies. France and Britain still viewed it as legitimate to assume new colonies.²⁶ Wilson proposed a middle-ground solution, whereby the European power could control the territory, but not on a permanent basis. Britain and France opposed this approach, arguing that it was unfair to give an administering power a tenure that could be changed in the future.²⁷ Eventually they acquiesced, and the mandate concept was written into the League Covenant.²⁸

Article 22 of the Covenant adopted for the League of Nations in 1919 characterized the peoples of the former German and Ottoman colonies as "not yet able to stand by themselves under the strenuous conditions of the modern world." It said that the states administering them should promote "the well-being and development of such peoples," bearing "a sacred trust of civilization." Administering states, which it referred to as mandatory powers, were to be accountable to the League of Nations.

Wilson insisted that in the administration of the mandate territories, "there should be no discrimination against the members of the League of Nations, so as to restrict economic access to the resources of the district."²⁹ Wilson expected the United States to be a member, and he wanted U.S. companies to be able to operate in the territories. In line with Wilson's proposal, a provision was written into the League Covenant that countries administering a mandate territory must "secure equal opportunities for the trade and commerce of other Members of the League."³⁰

The mandate system, on its face, seemed to operate on the basis of League nomination of appropriate mandatory powers. In fact, as we

saw in Chapter 6, France and Britain had, in the secret 1916 Sykes-Picot treaty, agreed on spheres of influence in the former Ottoman empire. The League gave Britain and France mandates over the territories as they had divided them up between themselves. The League of Nations did not consult the populations of the territories involved. On behalf of what would become Syria, it was argued that the League should send a commission to assess public opinion.³¹

Speaking against the mandate system at Versailles, . . . Rustem Haidar, the delegate from the Hejaz (future Saudi Arabia) said that the territories under League mandates should at least have the right to select the administering power, although it was clear that the leaders of the major powers, Wilson included, were not prepared to concede them that right. “Their right to decide their fate in the future has been recognized in principle. Very well! But you will allow me to say, Gentlemen, that a secret agreement to dispose of these nations has been prepared about which they have not been consulted. I ask the Assembly whether this state of things ought to exist or not.” This was a reference to the Sykes-Picot treaty. Rustem Haidar demanded, unsuccessfully, “that this agreement concluded without their assent should of full right be pronounced null and void.”³²

The Mandate System and Colonialism

Britain’s view of the obligations of the administering powers was more limited than Wilson’s. Prime Minister David Lloyd George said “there was no large difference between the mandatory principle and the principles laid down by the Berlin Conference, under which Great Britain, France, and Germany held many of their colonies.” Lloyd George said “that by adopting the mandatory principle wherever possible Great Britain would not be altering her Colonial regime to any appreciable extent.”³³ Thus, Lloyd George saw the mandate system as a

continuation of the status quo. Lloyd George did not mention the obligation stipulated in the League Covenant to move the territories to independence.

The Soviets wanted more than just to weaken the grip of the colonial powers. Lenin called for “a closer union of the proletarians and the working masses of all nations and countries for a revolutionary struggle to overthrow the landowners and the bourgeoisie. This union alone will guarantee victory over capitalism, without which the abolition of national oppression and inequality is impossible.”³⁴ If this were done, no outside country would be assured of the access to resources that Wilson sought.

Lenin viewed World War I as a fight among the colonizing powers to re-divide the third world. France and Britain were taking from Germany and the Ottoman Empire. He had called on leftists to oppose the war and to support instead a union of working-class parties worldwide. The social democrat leaders of Europe, however, generally backed their own countries in the war, leading Lenin to accuse them of betrayal of working-class aims.³⁵

Once the mandate system was in place, the Bolsheviks condemned it, as they did the activity of the League generally. Aleksei Rykov, as Chairman of the Council of People’s Commissars, in a report he titled “The League of Nations an Instrument of War and Not of Peace,” wrote: “The League of Nations is a little business undertaking that deals in peoples; it passes them over, as it sees fit, in the form of mandates, to the so-called states of high culture, which defend their mandate rights by force of arms and mercilessly enslave the peoples under their tutelage.”³⁶

The League was, to the Bolsheviks, a club of the wealthy. When the Soviet Union concluded a bilateral friendship treaty with Turkey in 1925, the government newspaper *Izvestiia* boasted that the Soviet Union treated the peoples “of the East” better than did the European powers: “The peoples of the U.S.S.R. and of the East will . . . regulate

their relations . . . without recourse to the League of Nations, outside the League and in spite of the League, which legalizes robbery and violence by the strong against the weak states.”³⁷ The mandate system represented the first major chink in the armor of colonialism. Although the system applied only to the German-held and Ottoman lands, it called any new acquisition of colonies into question.

The End of Colonies

SOVIET OPPOSITION TO COLONIALISM PUT PRESSURE ON the colonial powers to relinquish their territorial holdings.¹ In the drafting of the UN Charter, the Soviet government argued for language on self-determination.² In discussions leading to the establishment of a UN system of trusteeship that would replace the League of Nations mandates, the Soviet government stressed the need to move the trust territories to full independence. The Soviet delegate, responding to proposals for solutions that fell short of independence, said that “he did not agree that self-government alone would be an adequate objective, but emphasized the importance of independence.”³ The UN Charter, as finalized, reflected these positions. Without expressly calling colonialism unlawful, the Charter proclaimed self-determination of peoples as a principle of the organization.⁴

Wars of National Liberation

In 1960, the United Nations, for the first time, did characterize colonialism as illegitimate, making clear that self-determination and colonialism were incompatible. In a resolution titled “Granting Independence to Colonial Countries and Peoples,” the UN General Assembly called for “immediate steps” in all territories “which have not yet attained independence, to transfer all powers to the peoples of those territories,

without any conditions or reservations, in accordance with their freely expressed will and desires, without any distinction as to race, creed or color, in order to enable them to enjoy complete independence and freedom.”⁵

Soviet delegates at the United Nations had repeatedly called on the colonial powers to free their colonies.⁶ In a speech to the General Assembly two months earlier, Soviet Prime Minister Nikita Khrushchev said, “We must have done with colonialism.” Referring to colonialism as “slavery” and “bondage,” Khrushchev called for “the complete and final abolition of the colonial system in all its forms and manifestations.”⁷

Even more alarming to the colonial powers, the Soviet Union said that if they refused to relinquish territory voluntarily, the people of the territory could lawfully use military force against them. The Soviet jurist R. A. Tuzmukhamedov wrote, “Wars of national liberation can be equated with one of the forms of international sanctions, the application of which on the basis of the UN Charter is being demanded ever more insistently by the peoples towards colonial powers persisting in their illegal policy of barring self-determination of dependent peoples.”

Force against a colonizer was seen as a species of self-defense against illegitimate force used to maintain a colony. Tuzmukhamedov characterized the efforts of colonial peoples against colonial powers who used force to suppress them as “collective self-defense” under Article 51 of the UN Charter.⁸

These ideas were opposed by the colonial powers. In the West, legal opinion largely rejected the idea that colonialism was illegal, even after the 1960 resolution.⁹ Colonialism, in the Western view, could not be considered tantamount to an armed attack that would give the dependent people the right to use force against the colonizer.¹⁰

Nonetheless, the General Assembly said that a colonizer could not legitimately use force of arms to maintain its hold on the territory of a colony: “All armed action or repressive measures of all kinds directed

against dependent peoples,” said the General Assembly, “shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.”¹¹

That meant that a dependent people had a right to exercise its self-determination without military opposition. If military opposition were offered, the dependent people might lawfully resist it. The issue arose in the UN Security Council in the 1960s and 1970s, when Portugal attacked, from its colonial territories in Africa, base camps in neighboring states being used by guerrillas trying to overthrow it. Portugal argued that it had a right to defend itself against guerrilla raids, and therefore that it could attack the base camps. But the Council viewed Portugal as lacking a right to self-defense.¹² The Council condemned Portuguese attacks into Zambia,¹³ Senegal,¹⁴ and Guinea.¹⁵

In a resolution arising from a Portuguese attack to put down an insurrection in Guinea-Bissau, the Security Council said that Portugal, by attacking the guerrillas, failed to respect the right to self-determination of the people of Guinea-Bissau.¹⁶

The UN General Assembly repeated its position on force against colonialism when it adopted a resolution to define aggression. The Assembly excluded from “aggression” force used by a dependent people against a colonial power. “Nothing in this Definition,” declared the Assembly, “could in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter, of peoples forcibly deprived of that right and referred to in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, particularly peoples under colonial and racist régimes or other forms of alien domination; nor the right of these peoples to struggle to that end and to seek and receive support, in accordance with the principles of the Charter and in conformity with the above-mentioned Declaration.”¹⁷

The Declaration on Friendly Relations, to which the Assembly referred, said that “in their actions against and resistance to such forcible action in pursuit of the exercise of their right to self-determination, such peoples are entitled to seek and to receive support in accordance with the purposes and principles of the Charter of the United Nations.”¹⁸

The General Assembly, in one resolution, applied its position on anti-colonial force to military conflicts then in progress. It affirmed “the legality of the peoples’ struggle for self-determination and liberation from colonial and foreign domination and alien subjugation,” mentioning specifically the peoples of Zimbabwe, Namibia, Angola, Mozambique, and Guinea-Bissau, and the Palestinian people, “by all available means consistent with the Charter of the United Nations.”¹⁹

Compensation for Colonialism

After most of the colonies were freed, the Soviet Union continued to argue on their behalf. In the 1970s, the former colonies promoted the idea that the West should compensate them for the decades of colonialism. The West had depleted Asia and Africa by extracting minerals without fair compensation, and by exploiting labor with little return. Thus, it was only fair to require the former colonizers to provide financial aid or to give preferences in tariff treatment to allow the third world to catch up with the West.

The UN General Assembly adopted two highly controversial resolutions advancing these positions. One of them, called Declaration on the Establishment of a New International Economic Order, demanded, as a matter of legal obligation, the “[e]xtension of active assistance to developing countries by the whole international community.”²⁰

In the Charter of Economic Rights and Duties of States, the Assembly called on the developed countries to extend tariff preferences to the developing countries.²¹ The West disputed, to be sure, that it had a

legal obligation to assist. Despite the standoff at the level of legal principle, the major powers, including the former colonizers, consented to providing considerable assistance. When loan repayment obligations began to overwhelm the former colonies, some debts were forgiven. An ongoing process of negotiation developed between the capital-exporting and the capital-importing countries.

Battle was joined on a variety of fronts. When a treaty on the law of the sea was negotiated, the concept of equitable sharing penetrated international resource allocation. Governments agreed that the minerals in the deep sea bed were a world common resource and should be used to benefit the poorest countries.²² The United States, after initially supporting the concept, denounced it as socialism on a worldwide scale. Nonetheless, the concept was reflected in the UN treaty.

The Criminality of War

ON THE ISSUE OF WAR AND PEACE, THE SOVIET GOVERNMENT took important initiatives. It concluded bilateral nonaggression treaties with a number of states. Even though it had not been invited by the Western powers to participate in the drafting of a treaty outlawing war, it took the opportunity, once the treaty was finalized, to ratify it. In the Pact of Paris, also called the Kellogg-Briand Pact (1928), states declared “that they condemn recourse to war for the solution of international controversies, and renounce it as an instrument of national policy in their relations with one another.”¹

The Pact of Paris was to enter into force only after being ratified by the states that participated in the drafting. The Soviet government went one step further, organizing a group of Eastern European states to put the Pact of Paris into effect apart from ratification by the drafting states. Under the protocol, the Pact of Paris became binding immediately on states ratifying the protocol and would remain binding on them even if the Pact of Paris were not to gain enough ratifications to enter into force. The Soviet government ratified the protocol and secured ratification by Latvia, Estonia, Poland, and Romania.²

The Soviet government then initiated the conclusion of two treaties, also involving Eastern European states, to define aggression.³ The Pact of Paris had made no effort to define aggression. The two Soviet-sponsored treaties moved international law into more precise regulation of the subject of use of armed force by indicating the types of acts that would be considered to violate the Pact of Paris.

Hostage-taking

Germany's invasion of the Soviet Union in 1941 led to more initiatives on the law of war. After Germany occupied the western Soviet Union, its occupation forces began to intern civilians as hostages to force the population in a locality to submit to their regulations, and to turn in locals who organized to oppose the occupation. The population would be informed that the hostages would be killed if its orders were not followed. The Soviet government denounced this practice as a violation of the laws of belligerent occupation.⁴

Some Western scholars at the time thought that hostage-taking should be unlawful, because the law of belligerent occupation required respect for the local population. However, they acknowledged that hostage-taking had been common practice in prior wars, and that that practice cast doubt on whether hostage-taking was unlawful. Hostage-taking in occupied territory had been practiced by Germany during World War I and by Britain during the Boer war.⁵

The Soviet government argued that hostage-taking was unlawful, and that the German occupation forces were violating accepted international rules by engaging in the practice.⁶ Hostage-taking was characterized as the unlawful holding by an occupant of persons not directly involved in military action, with the aim of preventing resistance against the occupation.⁷ After World War II, the Soviet view that hostage-taking was illegal was incorporated into the belligerent occupation provisions of the Geneva Civilians Convention, which proclaimed, "The taking of hostages is prohibited."⁸

Status of Guerrillas

Despite the German practice of hostage-taking, bands of partisans, or guerrillas, began to attack German occupation troops. Many were captured by the German army. The Soviet Union wanted its captured

partisans to enjoy the protections that are supposed to be afforded to prisoners, under the law of warfare. Under that law, a prisoner is not considered to have committed a crime by participating in combat against the opposing army. A prisoner cannot be prosecuted for that conduct but must be kept under humane conditions until hostilities end, at which point release is required.

This protection upon capture attached to military personnel who were part of a regular army, but it had never applied to guerrillas. The Soviet government argued, however, that its partisans, if captured, should be treated as prisoners of war – that they could not be tried as criminals or summarily executed.

Soviet lawyers argued for this expansion of the concept of combatant by working from propositions already accepted in the law of warfare. For situations in which guerrillas acted against an army that had not yet established full occupation, they said that the guerrillas constituted a *levée en masse*. This doctrine, well established in customary law, gives combatant status to civilians who, upon the arrival of an enemy army, form irregular units to resist. So long as these units have some kind of central command, and so long as they observe the laws of warfare, their members must, if captured, be treated as combatants rather than as criminals.

Because Soviet guerrillas were directed by the Soviet army, Soviet lawyers also argued that the guerrillas could be considered combatants by virtue of affiliation with a regular army. Soviet guerrillas often collaborated with units of the Soviet army that had been planted inside occupied territory. Soviet lawyers also argued that guerrilla warfare was a valid reprisal to the “total war” style of the German army, which committed massive violations of humanitarian law.⁹

In later decades, international protection was accorded to guerrillas, in line with the Soviet initiative. The anti-colonial wars of the post-war period focused attention on the issue. When the law of warfare was revised in 1977, the definition of “combatant” covered members

of irregular forces seeking self-determination or resisting belligerent occupation.¹⁰

International War Crimes Trials

Perhaps the most significant issue on which the Soviet Union impacted the international law of warfare was individual penal responsibility for making war. During World War II, the Soviet government promoted post-war criminal proceedings against Nazi leaders. As early as December 1941, Joseph Stalin, in a declaration with Polish leaders, had said that the “punishment of Hitler’s criminals” would be pursued after what they predicted would be Germany’s defeat.¹¹ In 1943, Britain, the United States and the USSR jointly issued a declaration, warning German military personnel and Nazi Party members that whenever an armistice might be concluded, they would be “sent back to the countries in which their abominable deeds were done in order that they may be judged and punished according to the laws of these liberated countries.”¹²

The draft of this declaration was prepared by Winston Churchill, who hoped that this warning might deter atrocities. Churchill told Roosevelt and Stalin, “Moral scruples may be developed by many Germans if they know they are to be brought back to the country, and perhaps the very place, where their cruelties were inflicted.” The concern of the Allies was that war crimes were being committed on a major scale in the countries occupied by Germany.

Churchill added a sentence about Germans, presumably of the highest rank, whose atrocities were not tied to a particular location: “The above declaration is without prejudice to the case of the major criminals, whose offences have no particular geographical localization.”¹³ This sentence did not indicate how the Allies anticipated handling these major Third Reich figures, whether by criminal trial, summary execution, or otherwise.

Stalin replied to Churchill, suggesting the addition of one more clause to this sentence, namely, “and who will be punished by the joint decision of the Governments of the Allies.”¹⁴ This phrase did not make clear whether the “major criminals” would be punished summarily or after a trial, but by this time the USSR was promoting the latter.

The idea of trial before a specially constituted tribunal, created by the Allies, came first from the Soviet government. In 1942, Vyacheslav Molotov, commissar for foreign affairs, responded to a note from governments-in-exile of the Nazi-occupied countries. These governments wanted assurance that justice would be done after the war for the atrocities being committed against their populations.

As to the Third Reich leadership, Molotov replied: “The Soviet government considers it necessary that any one of the leaders of fascist Germany who in the course of the war already has fallen into the hands of authorities of States fighting against Hitlerite Germany be brought to trial without delay before a special international tribunal and punished with all the severity of the criminal law.”¹⁵ Molotov cited with approval a recent speech by President Franklin Roosevelt, in which Roosevelt said, “the ring leaders and their brutal henchmen must be named, and apprehended, and tried in accordance with the judicial processes of criminal law.”¹⁶ At that time, both Roosevelt and Churchill contemplated trials by individual states, either the states that allied against Germany, or the states occupied by Germany.

The British government had just sent the United States a proposal titled “Proposal for a United Nations Commission on Atrocities,” which called for a commission of investigation, but opposed the idea of trials at the supranational level and opposed the expansion of offenses beyond traditional war crimes: “The suggestion of some sort of international court for the trial of war criminals should be deprecated. Nor is it necessary or desirable to create a new body of law, for war crimes are already sufficiently well-defined.”¹⁷ The British government sent the United States another memorandum titled “Memorandum of British Views on Policy to be Adopted with Respect to War Criminals,”

suggesting that trials be conducted by the Allies individually, and that any court trying war criminals “should apply the existing laws of war and no special *ad hoc* law should be enacted.”¹⁸ The United States replied that it agreed with Britain’s approach.¹⁹ It thus was Molotov who first promoted trials at the international level.

The possibility of setting up an international criminal court had been discussed after World War I, when plans were made for a court under the League of Nations. But the idea went nowhere. The Permanent Court of International Justice, which was established as an adjunct of the League of Nations, was set up as a court in which states could sue states, rather than a court in which an individual might be prosecuted. The 1942 Soviet proposal was the first to be brought to fruition.

The leading figure in this Soviet endeavor was Aaron Trainin, an academic specialist on the law of war. Trainin’s concern was that, once the war ended, the German people as a whole would be viewed as responsible for the war. Trainin thought that this would not be a good basis for peace. Popular sentiment against Germans was strong in the countries Germany had attacked. Prominent figures in the West were calling for collective sanctions against the German people after what was hoped would be a German defeat.

Trainin mentioned Robert Vansittart, of the British foreign office, who made the argument for sanctions against the German people as a whole. Vansittart considered the German people responsible for the war and advocated drastic post-war measures to ensure that they did not again go to war.²⁰ Vansittart argued, “The surest way to play into Nazi hands is to let Germans believe that you distinguish between them and their rulers.”²¹ Vansittart said, “I have indicted the German nation. I have already been charged with doing so, and I do not shrink from the charge . . . The history of the last hundred years,” he said, quoting an unnamed German, “pronounces the German people as guilty as does the history of the last ten years to-day.”²²

Acting on this Soviet initiative, the four Allies set up a court in which each of the four had an equal role. They dubbed it an “international”

military tribunal, even though it was in reality a quadripartite body.²³ The tribunal held proceedings at Nuremberg in 1946 and pronounced sentence on major Third Reich civilian and military figures.²⁴

War as a Crime

The Soviet government promoted what would become a major legal innovation, the trial of government leaders for taking their armies to war, namely, for aggression. The Charter of the Nuremberg Tribunal, listing crimes within the jurisdiction of the tribunal, read, as the first crime listed, “Crimes Against Peace, namely, planning, preparation, initiation or waging of a war of aggression.”²⁵

Although there had been efforts to do this after World War I, only following World War II was the project carried to completion. Government leaders would be charged as criminals, for aggression. Initiating aggressive war would be a crime to which individual responsibility attached.

The Pact of Paris had prohibited states from resorting to war, but it said nothing about criminal responsibility for government leaders. As the implications of the Pact of Paris were discussed during the 1930s, nowhere was it suggested that it imposed criminal liability on government leaders.²⁶

The idea of charging aggression as a crime had not been suggested when the Allies declared in 1943 that they would try German leaders after the war.

As described at the time in the *American Journal of International Law*, it was Trainin who first proposed aggression as a criminal offense.²⁷ In 1944, he wrote a book in which he urged the codification of international crimes, including one to be called “crimes against peace.”²⁸

Trainin sought to distinguish between the people and the leaders. He wanted to avoid an attitude of hostility toward ordinary Germans after the war. Charging the German leaders for starting the war would

focus attention on them as the culprits, thereby making clear that not every German shared their aims.²⁹

Trainin's book exerted considerable influence. In December 1944, it was under study at the U.S. Department of State, which distributed copies to staff members preparing the U.S. position on possible trials.³⁰ In the War Department, the issue of whether aggressive war was a crime was being debated, and the predominant opinion was that it was not. A memorandum commissioned by Assistant Secretary of War John J. McCloy said that trial should be for violations of the laws of war, but not for the act of starting the war.³¹ A memorandum prepared for the Judge Advocate General referred to the Pact of Paris as a treaty regulating states, but not individuals: "There is not the remotest suggestion in the Pact that the authors of a war in violation thereof were to be criminally responsible for their wrong. The language used is the language of compact, not crime; it sounds in contract, not punishment."³²

At that juncture President Roosevelt entered the fray and turned the debate around. He said that charges against the Axis leaders should include "an indictment for waging aggressive warfare, in violation of the Kellogg Pact [Pact of Paris]."³³ The War Department then produced a memorandum arguing that aggressive war could be charged as a crime. The memorandum cited resolutions from several international conferences of states and then the Pact of Paris.

The War Department cited the Soviet position, and Trainin. "It may further be pointed out," the memorandum continued, "that the Soviet view is likewise to the effect that the launching of an aggressive war is today a crime in international law. This is made clear in a book entitled 'The Criminal Responsibility of the Hitlerites' by A. N. Trainin, a Soviet professor of law who is a leading member of the Extraordinary State commission for the Investigation of German Crimes, and who expresses not only his own opinion but also the official attitude of the Soviet Government."³⁴ The Secretary of State, Secretary of War, and Attorney General shortly gave President Roosevelt a joint memorandum in which they suggested trials of the major Third Reich figures

for “the waging of an illegal war of aggression.”³⁵ The basic decision to try for aggressive war had been made.

Trainin’s book was reviewed in the *American Bar Association Journal* in July 1945. The reviewer noted that Trainin provided a list of offenses, and that the first offense listed was “acts of aggression.”³⁶ The book was translated into English as *Hitlerite Responsibility Under Criminal Law*, and the U.S. delegates had it with them when they negotiated the London Agreement in August 1945.³⁷

Trial of Industrialists

Trainin also promoted the idea that German industrialists should be tried, along with government officials. This proposal attracted attention. The review of Trainin’s book in the *American Bar Association Journal* noted that he called for “punishment to be meted out to German financial and industrial magnates.”³⁸ “It was no doubt due to the influence of these views that charges [at Nuremberg] were brought against some of the defendants,” wrote the editor of the *American Journal of International Law*.³⁹

The idea that individual government leaders could be tried for aggression was radical enough, but that leaders of industry, not part of the government structure in a formal sense, could be tried was more radical still. The rationale derived from the Marxist notion of the state as representative of the bourgeoisie. Writing in 1944, Trainin described how German industrialists had set up a steel company in occupied Ukraine to extract resources for Germany’s war effort. He said that they were “war profiteers” who should not “evade justice.”⁴⁰ Trainin wrote that Hitler was supported by “powerful German financial and economic concerns.”⁴¹ At the highest level, Trainin wrote, industrialists collaborated with Hitler to provide the Third Reich with the means to wage war, making them “members of Hitler’s clique.”⁴²

The twin ideas of prosecution for aggressive war and trials at a supranational level became established principles after the war. The General Assembly of the United Nations resolved to regard the principles of the charter for the Nuremberg tribunal as reflecting principles of international law.⁴³ After it set up an International Law Commission, the General Assembly directed it to prepare “a draft code of offences against the peace and security of mankind,” on the basis of the Nuremberg principles.⁴⁴ In 1998, the concept of aggression as a crime was incorporated into the Statute of the International Criminal Court.⁴⁵ That Court embodied the idea the Soviets had suggested to the Allies in 1942 of an international court to conduct trials for aggression or other internationally defined offenses. The Statute held open the possibility that civilians, including industrialists, could be tried for aggression.

Protecting Sovereignty

AS THE SOVIET UNION CAME INTO COLD WAR CONFLICT with the West, it found itself in a minority among the major powers. The Soviet Union was isolated in a world dominated by powers hostile to it. The Soviet government viewed itself as being “encircled” by the capitalists. That situation gave an incentive to insist on defense of sovereignty.¹ In international fora such as the United Nations, this minority posture inclined the Soviet government to seek protection from majoritarian initiatives. The sense of being encircled and the greater physical and political power of the West inclined it to protect its territory from any encroachment. The Soviet government urged doctrines that would ensure against territorial intrusions, both with respect to its own territory and the territory of other states where it vied with the West for influence.

Reservations to Multilateral Treaties

The Soviet Union’s minority position in the United Nations made it a champion of preserving state sovereignty vis-à-vis UN procedures. When the International Court of Justice was set up as part of the United Nations, it was contemplated that most states would submit themselves to mandatory adjudication, so that the Court would become a forum for resolving major disputes between states.

To the Soviet Union, however, the Court was populated by capitalist judges, and hence not a friendly forum. Under the Court's founding statute, a state would be subject to the Court's automatic jurisdiction only if it filed a declaration to that effect. Most Western countries did so, but the Soviet Union and its allies did not.

The Court also had jurisdiction over disputes on the basis of provisions in treaties that referred disputes to the Court. The first major treaty negotiated under UN auspices was the Genocide Convention of 1948. The Convention required states to prevent and punish genocide and, importantly, allowed any state party to sue any other state party in the International Court of Justice for failing to comply.² The Soviet government wanted to ratify but did not want to subject itself to suit by the capitalist powers. It hit upon the idea of submitting a ratification, but at the same time reserving to the clause that allowed suits for violations.

This reservation caused consternation at UN headquarters. There was no established practice regarding multilateral treaties that would allow, or disallow, a reservation. The Secretary-General, who was charged with receiving ratifications to the Genocide Convention, did not know how to react. The General Assembly decided to seek an advisory opinion from the International Court of Justice on the question. The Court issued an opinion that reflected the novelty of the question. Five of the judges said that reservations would damage the integrity of obligation under a treaty and thus were impermissible. But seven, a majority, said that a ratification with reservations was acceptable, at least within some limits.³

The view of the Court's majority became the international standard. A treaty was concluded about treaty procedure, and it said that a state might ratify, yet reserve to certain provisions, so long as the reservations were consistent with the "object and purpose" of the treaty.⁴ It was thus the Soviet Union's use of the reservation tool that led to solidification of the rule that reservations to treaties are acceptable, that a state that files a reservation may nevertheless become a party.

A New Role for the UN General Assembly

Finding itself in a political minority in the United Nations, the Soviet Union could not convince the organization to follow its international agenda. Far from it, the Soviet government fell into a role of objecting to what the Western powers sought to accomplish. That role was reflected in the vetoes the Soviet Union began to cast in its position as a permanent member of the UN Security Council.

The first major episode of vetoing had an immediate impact on institutional arrangements at the United Nations. In 1950, the Soviet government was boycotting Security Council meetings, in protest of the Council's refusal to give China's UN seat to the mainland Chinese government. Instead, the United Nations took the government that had lost to the Communist Party and fled to Taiwan as the legitimate government of China.

With the Soviet Union absent from the Security Council, the United States succeeded in gaining the adoption of a resolution calling for military action in Korea.⁵ The Soviet government quickly ended its boycott. When the United States proposed a resolution calling on states not to support North Korea, the Soviet Union cast a veto.

In response, the United States asked the UN General Assembly to take on a role in war and peace matters. The UN Charter had given war and peace to the Security Council. Moreover, the Charter gave a power to make decisions binding on member states only to the Security Council. The General Assembly enjoyed the power only to discuss war and peace, but not to make decisions about situations of conflict.⁶

Nonetheless, the United States urged the General Assembly to adopt a resolution specifying that if the Security Council were unable to fulfill its war and peace responsibilities because of a veto cast by a permanent member, the General Assembly could consider the matter and could call upon member states to take military action to restore the peace. The resolution was called "Uniting for Peace." The Soviet government spoke against adoption, but the General Assembly passed it.⁷

Protecting Sovereignty

The call on member states would, to be sure, be a recommendation only. Nonetheless, the resolution propelled the General Assembly into a new realm of activity, in direct response to the Soviet veto.

The General Assembly then called on states to contribute forces to the military action in Korea that the Security Council had initiated. For the next three years, the UN military action in Korea was conducted on this basis.

Once the war in Korea ended, the Uniting for Peace resolution remained. It became an accepted part of the UN method of operation. The General Assembly used it in other conflicts. One of the more important instances was a resolution to set up a border watch by UN troops along the border between Egypt and Israel, following the 1956 Middle East war.⁸

Guarding Borders

The Soviet Union jealously guarded its off-shore waters. It claimed twelve miles of territorial sea, at a time when the major maritime powers considered three or four miles as the maximum allowed. It stopped fishing by vessels from Scandinavia that had traditionally fished near the Russian coast. The territorial sea concept had developed to allow a state to keep the navies of hostile nations from approaching its shores. The breadth was originally set at what was thought to be the range of cannon, fired from shore. This was reckoned at three miles.

International practice on breadth of territorial sea claims was not entirely consistent, but as of the 1920s, few states claimed more than a six-mile territorial sea. In 1927, the Soviet Union adopted a statute declaring a twelve-mile territorial sea.⁹ Soviet lawyers argued against those who insisted on three miles as the maximum breadth of territorial waters.¹⁰

After World War II, the USSR pressed its claim for a twelve-mile limit.¹¹ When a treaty on the territorial sea was negotiated at the United

Nations in 1958, the impasse could not be breached. Because the Western powers would not agree to a territorial sea breadth as substantial as that advocated by the USSR, the resulting treaty was silent on the question.¹²

The gulf between these claims for the breadth of territorial sea was ultimately resolved in favor of the Soviet approach. In 1967, the Soviet government called for an international conference to gain consensus on twelve miles.¹³ It sent a high-level delegation to lobby the major maritime powers – the United States, United Kingdom, Norway, Canada, Japan, and Australia – in off-the-record talks.¹⁴

The United States resisted a twelve-mile limit. It wanted its naval fleet to be able to patrol within twelve miles of the shores of other states. It also wanted its commercial vessels to be free to navigate through international straits, some of which were only a few miles wide. The United States demanded, and got, from the Soviet Union its agreement to accept unhindered passage through international straits.¹⁵

In 1970, the United States decided to support the Soviet proposal for a twelve-mile limit.¹⁶ In a development that was unusual for the Cold War, the two powers jointly approached other states to ask them to support a twelve-mile territorial sea.¹⁷ When a new conference was called, this view carried the day. The 1982 UN Convention on the Law of the Sea provided, “Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles.”¹⁸

The move to twelve miles was a major change for the Western maritime powers. It gave coastal states more control over transit by the military vessels of the maritime powers. It allowed coastal states to prevent fishing by the long-range fishing fleets of the major powers.

Complicity

The Soviet government objected to efforts by the United States to project information to the Soviet public and to conduct intelligence

activity. The Soviet government complained when the United States launched balloons containing propaganda leaflets to be dropped over Soviet territory.¹⁹ It also complained to the United States for launching observation balloons over Soviet airspace equipped with automatic cameras and radio transmitters.²⁰

In its protests for violation of airspace by the launching of balloons from nearby countries, the Soviet Union protested not only to the United States as the launcher, but as well to Germany and Turkey, as the states from whose territory the launches occurred. It held them, along with the United States, responsible for violating its air space.²¹

A few years later, the International Law Commission of the United Nations undertook to codify the international law relating to situations in which a state violates an international obligation but is assisted in some way in doing so by another state. The Commission called this situation complicity, using an analogy from criminal law.

The Commission's special rapporteur on the topic surveyed international practice, to determine whether states accepted the idea that a state that helps another to commit a wrong is itself legally responsible. He found protests "relatively rare" in which one state protested to a state for allegedly aiding a third state to commit an international violation. Two of the few instances the special rapporteur found to cite were the protests by the USSR to Germany and Turkey for allowing the United States to launch balloons from their territory.²²

The Soviet protests were a significant indication to the commission of state practice affirming the development of a concept of complicity. The commission wrote a provision on complicity and included it in a draft convention on the legal responsibility states incur when they violate the rights of other states.²³ The UN General Assembly called upon states to apply the draft in their relations with other states.²⁴

The doctrine of complicity had a profound impact on the international legal system. It meant that states had to be cautious in activity that might result in a violation of international law by another state. The doctrine had particular effect for states that give military or economic

aid to other states. A recipient state may use donated resources in a way that violates human rights.

The complicity doctrine also applied to a state that might allow another state to use its territory for an unlawful purpose. Complicity was invoked, for example, by the Council of Europe (COE) against European states thought to have helped the United States in transporting terrorism suspects to secret locations for coercive interrogation. The COE Secretary General found, as one basis for liability of European states in the matter, their assistance in the commission of a wrongful act by the United States: "In accordance with the generally recognised rules on State responsibility," the Secretary General said, referring to the International Law Commission's provision on complicity, "States may be held responsible of aiding or assisting another State in the commission of an internationally wrongful act."²⁵

For a state planning to violate international law and seeking to enlist another state to help it, the doctrine meant that the state whose assistance was sought would have to be concerned that it might, itself, be violating international law. That fact, in turn, made it more difficult for a state to enlist another in legally questionable activity.

The doctrine was written into one major treaty, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment. The treaty provides that a state may not surrender an individual to another state, whether by extradition or by deportation, if there exists "substantial grounds for believing that he would be in danger of being subjected to torture."²⁶ A state so surrendering an individual is viewed under the Convention as violating the individual's rights.

Military Intervention

THE SOVIET UNION ALSO URGED PROTECTION OF SOVEREIGNTY in regard to military intrusions by the Western powers into third world states. In the early twentieth century, gunboat diplomacy had been the practice. In 1902, British, German, and Italian warships blockaded Venezuela and shelled its coast after Venezuela failed to pay damage claims to foreign nationals. The United States occupied Haiti from 1915 to 1934 to manage its financial affairs.

The Cold War created a dilemma for the West, and particularly for the United States, in regard to the international rules on use of force. The United States sought on occasion to use military force against governments, or potential governments, that might ally with the Soviet Union. The USSR, to be sure, faced the same dilemma. On occasion, it, too, tried military force, though less frequently than the United States, to ensure a government would be on its side in the Cold War. It intervened in Hungary in 1956 and again in Czechoslovakia in 1968.

It was the United States, however, that intervened most frequently during the Cold War. The Soviet government dogged it relentlessly in the UN Security Council. The United States either denied involvement or acknowledged the action and sought to justify it, typically on the ground of protecting its nationals. The Soviet Union accused the United States of violating its commitment to the international rules enshrined in the UN Charter. It insisted on respect for territorial sovereignty.

The UN Charter had imposed strict limits on military intervention. It prohibited force against the political independence or territorial integrity of another state.¹ The only exception, self-defense, was defined strictly. A state could use military force in self-defense only if the other state initiated an armed attack, and force was necessary to repel that attack.²

There were other situations, however, in which, under the pre-UN Charter law, force might lawfully be used. If a state's nationals were endangered, for example during a civil war, a state might intervene militarily. If a state were attacked by another state, but the attacking state had withdrawn, the victim state might lawfully use military force in reprisal, as a way of letting the attacker know that it should not engage in such conduct in the future.

In any event, the strict approach of the UN Charter would be translated into reality only if instances of violation could be brought to light and criticized. Whether proper implementation could be achieved was questionable, given that the Charter gave the power to deal with war and peace to a Security Council on which five major powers each had a permanent seat. The acquiescence of each was required before the Council could take action on an allegation that force had been used unlawfully.³

On a series of occasions during the Cold War, the United States took military action in another state to try to change a government or to protect a government at risk of being overthrown. In each instance, the Soviet government denounced the United States and sought to hold it to a strict interpretation of the UN Charter's limits on the use of military force.⁴

Covert Intervention

In 1954, Guatemala's elected president, Jacobo Arbenz, decided to nationalize uncultivated land of the U.S.-owned United Fruit Company

and distribute it to Guatemalan peasants. Arbenz offered compensation at the value United Fruit declared for tax purposes, but the Eisenhower administration objected that the land was worth twenty-five times that amount. President Eisenhower secretly ordered the Central Intelligence Agency (CIA) to overthrow Arbenz.⁵ The CIA recruited Guatemalans disposed against Arbenz for a small military force, which it secretly trained in southern Florida. It set up clandestine bases for the insurgents in Honduras and Nicaragua and supplied weapons and bomber aircraft.⁶

One coup plotter had second thoughts and informed Arbenz, who then accused the United States.⁷ The State Department called Arbenz's charge "ridiculous and untrue," and affirmed, "It is the policy of the United States not to intervene in the internal affairs of other nations."⁸

Arbenz complained to the UN Security Council, but putting the onus on Honduras and Nicaragua for plotting against him, rather than on the United States. Semyon Tsarapkin, the Soviet delegate, identified the United States and accused it of aggression. Tsarapkin told the Security Council that Guatemala "has been subjected to an armed attack provoked, organized and carried out by the United States of America."⁹

The U.S. delegate, Henry Cabot Lodge, replied, "the situation does not involve aggression but is a revolt of Guatemalans against Guatemalans." Lodge called Tsarapkin's charge "flatly untrue; I challenge him to prove it."

The U.S. Information Service placed unattributed articles in regional newspapers "labeling certain Guatemalan officials as communists, and also labeling certain actions of the Guatemalan government as communist-inspired."¹⁰ CIA airplanes, some piloted by Guatemalans, some by persons hired by the CIA, bombed Guatemala City.¹¹ The CIA set up a radio station that broadcast messages to convince Arbenz he had no chance to remain in power.¹² Succumbing to this pressure, Arbenz resigned, and the coup leaders set up a junta to run the country. Only the USSR accused the United States of having organized the coup.

A few years later, President Eisenhower set in motion a similar covert operation, this time to overthrow the government of Cuba, headed by Fidel Castro. The CIA trained a Cuban force at sites in Guatemala, and from there the Cuban force set out by sea toward Cuba, hoping to land and to spark a rebellion against Castro.¹³

The plan came to naught when the Cuban rebels met defeat after landing at the Bay of Pigs on Cuba's southern shore. President John Kennedy, who came into office as the operation was under way, denied any U.S. role.¹⁴ In a protest note to the United States, Prime Minister Nikita Khrushchev charged that the Cuban force was "prepared, equipped, and armed in the United States," and that aircraft that bombed Cuba "belong to the United States of America."¹⁵ No other major power pointed a finger at the United States. So here, as in the Guatemala operation, it was only the USSR that accused the United States of unlawful intervention.

In the 1980s, the CIA secretly organized a group of Nicaraguan businessmen as a leadership group for rebels loyal to Anastasio Somoza, who had been overthrown as leader of Nicaragua. The rebels, from bases in Honduras, sought to overthrow the government of Nicaragua, and to restore the prior government. The Soviet Union again was the only major power to criticize the United States.

Overt Intervention

On three other occasions, again involving Latin America, the United States openly dispatched troops to secure power for friendly elements. The United States made arguments to justify the legality of the actions, asserting that U.S. nationals resident in these countries were in danger. This rationale for intervention was controversial because of the UN Charter's authorization for armed force only for self-defense. The United States argued that when its nationals were endangered, it was under attack as a state and therefore could lawfully intervene.

Military Intervention

However, the UN Charter provision on self-defense spoke of an armed attack against a state, which seemed to imply an attack on the territory of a state or at least on its military forces. Each time the United States intervened and asserted a need to protect its nationals, the Soviet Union objected to the legal rationale. In addition, it challenged the factual assertion that protection of U.S. nationals was what motivated the intervention.

The first instance was in the Dominican Republic. Juan Bosch had been overthrown in 1963 as president and replaced by a military junta. In April 1965, elements loyal to President Bosch took up arms against the junta and invited Bosch to resume office.¹⁶

The U.S. embassy in the Dominican Republic sent the State Department a cable proposing an intervention, on the rationale that “Bosch’s return and resumption of control of the government is against U.S. interest in view of extremists in the coup and Communist advocacy of Bosch return.”¹⁷ Bosch had been no ally of the United States but neither was he allied with the USSR.

The United States sent in Marines, stating a different rationale: It had been “informed by military authorities in the Dominican Republic that American lives are in danger.”¹⁸ It gave the same rationale to the UN Security Council.¹⁹ That prompted the Soviet Union to ask the Security Council to convene to discuss “the armed interference by the United States in the internal affairs of the Dominican Republic.”²⁰

A few days later, the United States sent more Marines to the Dominican Republic, stating a new rationale: “to help prevent another Communist state in this hemisphere.” President Johnson said that “what began as a popular democratic revolution” had been “seized and placed into the hands of a band of communist conspirators” with ties to Cuba.²¹

The Soviet Union denounced the new action as “an act of open aggression” and an infringement on Dominican sovereignty. It said the United States was “dealing barbarously with the people of a sovereign country who have risen against a bloody dictatorship.” It said that the

new rationale showed that the initial claim of protecting Americans had been a “false pretext.” The actual motive, it said, was to secure “a régime acceptable to the United States.” It asked the Council to require the United States to withdraw.²²

The Security Council took no effective action, deciding to leave the matter to the Organization of American States.²³ The Marines remained for a time and were able to keep Bosch from resuming the presidency. The assertion of protecting endangered nationals did not get a full airing. The Soviet government was the most vociferous in challenging the need for protection, but many governments were unsure of the factual situation.

The Soviet government had the more solid view of the facts. In the last day or two before the initial dispatch of Marines, the U.S. Navy had successfully evacuated just under 2,000 U.S. nationals from the Dominican Republic, without any invasion force.²⁴ That number represented nearly the total number of U.S. nationals resident at the time in the Dominican Republic. It is not clear whether the Marines evacuated any significant number after landing. Several weeks after the landing, Secretary of State Dean Rusk gave an accounting of evacuation efforts and said that 1,800 had been evacuated overall by the United States. If that number was accurate, few, if any, were evacuated by the intervening Marines.²⁵

The United States intervened twice more in Latin America, on a rationale of protecting endangered U.S. nationals. In 1983, it sent troops that overthrew the government of Grenada. In 1989, it sent troops that overthrew the government of Panama. In both instances, the assertion of a need to protect nationals was weak. Again, the USSR charged aggression. On these occasions, the international community rejected the rationale for intervention, understanding that the Soviet condemnation was valid. These interventions were brought before the UN Security Council, and each time a majority of the membership voted to reject the assertion.

Military Intervention

By asserting a need to protect nationals, the United States sought to construe the UN Charter provisions on use of force to allow intervention for that purpose. The fact that the Soviet Union challenged the United States on the facts kept the rationale from being accepted as a valid construction of the Charter. The Soviet objections throughout this series of interventions gave the international community reason to be skeptical of the asserted rationales. They kept use of force under a scrutiny that might not have otherwise have been in evidence.

Treaties Under the Gun

As an adjunct to protecting weaker states from military interference, the Soviet government promoted the idea that if a powerful state forced a weak state into a treaty by threat of military force or threat of economic reprisal, the treaty was void. The issue was the focus of international attention when a treaty on the law relating to treaties was drafted in the 1960s. Soviet delegates argued that such threats should nullify a treaty, and that the law on treaties should say that a treaty concluded under threat is not valid.²⁶

This notion was initially opposed by the West, because peace treaties are normally concluded at the end of a war, and not infrequently one side or the other is under great military pressure from the other side to sign. If the war pitted a powerful state against a weak state, the latter would be more likely to be the state under pressure. Hence, the Soviet position favored weaker states.

Eventually, the treaty was adopted as the Vienna Convention on the Law of Treaties, and a provision was included to say that at least egregious cases of overbearing might nullify a treaty. The Convention provides that a treaty is void “if its conclusion has been procured by the threat or use of force in violation of the principles of international law embodied in the Charter of the United Nations.”²⁷

PART FOUR

LAW BEYOND THE COLD WAR

Triumph of Capitalist Law?

THE DEMISE OF THE SOVIET UNION WAS VIEWED IN THE West as a defeat of everything the Soviet Union had espoused. Francis Fukuyama, deputy director of the U.S. Department of State's policy planning staff, in 1989 viewed the events then unfolding as a victory of Western ideas over Soviet ideas. "The triumph of the West, of the Western *idea*, is evident first of all in the total exhaustion of viable systematic alternatives to Western liberalism." What was occurring, Fukuyama said, reflected "not . . . a convergence between capitalism and socialism, as earlier predicted," but rather "an unabashed victory of economic and political liberalism."¹ The Western idea had prevailed over the Soviet.

U.S. President George H. W. Bush struck a similar note, saying that now the rule of law, Western style, could prevail in the world. "Out of these troubled times," Bush told a joint session of the U.S. Congress in 1990, "a new world order can emerge, a new era, freer from the threat of terror, stronger in the pursuit of justice, and more secure in the quest for peace. An era in which the nations of the world, east and west, north and south, can prosper and live in harmony."

Bush spoke against the backdrop of military confrontation in the Persian Gulf. The concerted United Nations action there, he said, heralded an era in which international conflicts could be managed, and in which aggression would no longer be feasible. The international community, free of the scourge of war, could address itself to other serious

problems confronting the planet. It would be “a world where the rule of law supplants the rule of the jungle. A world in which nations recognize the shared responsibility for freedom and justice. A world where the strong respect the rights of the weak.” Bush said that “America and the world must support the rule of law. And,” he promised, “we will.”²

With the Soviet Union off the world stage, Bush was saying that the rule of law as it existed in the West would prevail. The United States set out on a program to promote the rule of law in the countries emerging from what had been the Soviet Union, and in the other Eastern European countries of the former Soviet bloc. Those countries would be integrated into the Western economic and political order, and they would throw off authoritarianism in favor of Western concepts of democracy and good governance.

The debate about capitalist and socialist law did not vanish, however. In Eastern Europe, political parties deriving from the former ruling communist parties experienced some resurgence. China, the world's most populous nation, was still defining itself. Significant market economy elements were introduced in the final years of the twentieth century, yet socialist elements had not disappeared. In 2006, a draft law on property rights was under consideration. One professor at Beijing University Law School found it to tilt too heavily in favor of capitalist, or free market, property ownership. He accused the drafters of “copying capitalist civil law like slaves.” He said the draft offered protection equally to “a rich man's car and a beggar man's stick.” He criticized the draft for omitting a statement found in prior legislation that “socialist property is inviolable.”³

Anti-neocolonial inclinations were felt. Economic globalization, promoted by the West, engendered an opposition that drew on ideas formerly espoused by the Soviet Union. In Venezuela and Bolivia, governments came to power sharply critical of what they viewed as the overbearing style of the major powers. In Mexico, the electorate was evenly split in 2006 between a free market candidate and one favoring government intervention.

Western law had absorbed features from the Soviet system that was then beginning to see itself as part of the Western world. With capitalist states starting at one end of the spectrum and the early Soviet state at the other, the two began a process of convergence, Fukuyama's view notwithstanding. In the economic field, government intervention in the West and decentralization in Eastern Europe reduced the differences. The same was true in the law.

Mikhail Gorbachev's aim, ultimately unsuccessful, was to maintain the advantages of state direction while giving economic actors an opportunity to be more creative and productive. The USSR would move closer to the market economies, but without abandoning socialism. Political reform would bring the USSR closer to the parliamentary systems of the West, with contested elections and opposition elements. Checks would be placed on the executive branch of government. Gorbachev sought to eliminate the overcentralization of both economic and political authority while retaining aspects of socialism that enhanced the lives of the people, like job tenure for workers, gender equality, and an overall direction for the economy.

The Western polities toward which the bloc was moving were far different from what they were when Bolshevism came upon the scene. Capitalism had moved substantially from its nineteenth century roots. The state had assumed a permanent role in making the economy function.⁴ Along with that state role, the legal systems of the market-economy states had been altered as well. Their former orientation to the individual had given way to a focus on social needs. Moreover, of the countries whose economies improved rapidly during the 1970s and 1980s, a persistent feature was strong government intervention. Japan, Taiwan, and Korea all made gains in the world market, not by *laissez-faire*, but with significant governmental direction.⁵

As the East moved closer to the West with the reforms of 1989–90, it moved closer to a West that, itself, had moved in the direction of the East. Karl Marx, if he were able to offer an opinion today, might well feel that his analysis of capitalism had proved correct. During the

twentieth century, significant compensation was made for the negative features of capitalism. Western legal systems came to reflect elements of socialization. The working classes of the advanced industrial states did not overthrow the existing order, but significant accommodation was made to their concerns. Marxist thought had influenced the legal orders in both the East and the West.

Roscoe Pound identified areas of law in the West in which he found what he called a “socialization of law” developing in the first half of the twentieth century.⁶ Pound included “limitations on the use of property: anti-social exercise of rights,” “limitations on freedom of contract,” “limitations on the power of the creditor or injured party to exact satisfaction,” “interest of society in dependents,” “replacing of the purely contentious conception of litigation by one of adjustment of interests.” Pound’s thought was that in these matters, the law came to reflect a societal interest, whereas previously it had focused on individual interests.

Despite the failure of the USSR to maintain itself, the concepts the Soviet government had injected into political dialogue remained very much a part of the discussion of social policy. Advocates of reform in the delivery of medical services used the phrase “universal health care” as they pressed governments to initiate new programming. Advocates of better housing for the poor waved the banner of “housing for all.”

Such concepts had been in decline from the 1980s, as the free market thinking espoused by Margaret Thatcher in the United Kingdom and by Ronald Reagan in the United States had come into vogue. But even that line of thinking left in place much of what had been incorporated into Western law during the twentieth century.

The mass media version of the demise of the Soviet Union, whatever grain of truth it may contain, did not do justice to a significant period of history. For seventy years, the tension between the Soviet Union and the industrialized West was the defining element of the international

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order. What each side did, in both domestic and foreign policy, was done in a context in which the other side was not irrelevant.

Domestic policy was fodder for the propaganda war that each side waged against the other. Policy initiatives were undertaken with an eye to how they would improve the ability to withstand challenges from the Cold War opponent.

The Moorings of Western Law

PUBLIC LAW CAME TO PLAY A MAJOR ROLE IN THE LEGAL systems of Western Europe in the twentieth century, in part as a result of the impact of Marxist thought. The social democracy movement that grew out of Marxism in the nineteenth century was the intellectual and political force behind the creation of the welfare state, which brought public law to center stage.¹ In that process, the dichotomy between private and public law was eroded.²

Governments in the West came to operate sectors of the economy and to give orientation to agriculture and industry.³ “All economies are mixed economies and the Soviet economy is no exception,” wrote one Western analyst. “It is only the mixture that is different.”⁴ Governmental economic planning partially displaced freedom of contract in Western civil law countries. This trend blurred the distinction between commercial and administrative law.⁵

In Western civil law countries, the private law of tort was partially replaced by government insurance.⁶ The labor relation, formerly a matter of private contract between employer and employee, came to be regulated by public law. Public law took over from private law the regulation of family relationships, as governments intervened to protect members of the family from each other.

When environmental degradation was recognized as a serious problem, governments were already invested with such a major role in public

issues that it was but a short step for them to assume responsibility for environmental protection.

Western law incorporated, as a new and major feature, the law regulating relations between the individual and the state with respect to the state's welfare function – administrative law and taxation law. These innovations need not be viewed, however, as threats to Western law. They are mechanisms for permitting Western law better to carry out the social ordering now considered necessary.

These changes moved Western law beyond the model of the French Civil Code, which viewed individuals interacting with each other and the state playing only a minimal role in mediating their conflicts. That model changed irrevocably in Western law. The state came to play a central role.

The changes in Western law that parallel innovations in Soviet law have changed the face of Western law. The inferior legal status of women in Western law, as found in the early twentieth century, has been altered dramatically. Women today enjoy greater legal protection in property, labor, and family relations. This improvement in status has constituted a benefit not only to women but to society as a whole, as women have taken a new role in public life.

The changes in Western law in the labor relationship have brought a measure of dignity for the worker. Social welfare programs instituted in Western law have reduced poverty and have provided access to health care. Government has assumed a responsibility for ensuring a decent life for citizens, even if this responsibility is not carried out in full measure.

Gender and race equality have been impacted, in part as a result of the strength of the ideas, in part because the Soviet Union was attuned to historical processes already in motion.

The law governing the international community and, in turn, the populations of the countries of the world, has seen substantial change as a result of positions pressed by the USSR. The Soviet Union kept the West within limits in the use of military force. Whenever the United

States intervened militarily, whether covertly or overtly, it knew it would have to respond to a Soviet delegate at the United Nations. On protection of sovereignty, the Soviet Union protected both itself and third world states. It gained recognition of a broader band of territorial sea. Its defense of sovereignty led to the crystallization of the norm prohibiting complicity by a state in an international law violation committed by another state.

The criminal trials of major perpetrators of rights atrocities assumed prominence in the late twentieth century. This development might not have come about had the USSR not pushed the idea during World War II. The post-war trials might not have occurred at all, and might well not have included aggression as a crime.

On international human rights, the Soviet efforts to raise racial segregation in the United States as an international issue pushed the United Nations to develop procedures to deal with human rights complaints. The attention directed through the International Labor Organization at labor conditions was, as we saw, a direct outgrowth of Soviet calls upon the workers of the Western world.

One concept of Soviet law that spans the various fields of law also came into vogue in the West. The early Soviet legislation was, to a significant degree, programmatic. It was aimed at showing how society should develop, as much as at regulating societal relations as they stood at the time. The Bolsheviks proclaimed housing as a right of the people, even though the government did not have the means to make that right a reality. The legislation on equality of the sexes was intended as much to lead society as to regulate it.

That concept of how law can function, we saw in Chapter 14, was in vogue in the United States in regard to racial discrimination. It was also a feature of governmental regulation, as governments tried to mold human conduct. Factory inspectors in Britain reported they could scarcely prosecute all the prosecutable conditions they found in British factories. Instead, in most instances, they simply informed

factory managers about the violation, hoping to create a culture of compliance.⁷

The impact in Western law of socialism and Soviet law has been felt primarily in substantive law. New rights have been afforded. The procedural side of Western law has been affected less, though it also has experienced change. Soviet law had less to offer. The growth of administrative law has brought as well a growth of administrative procedure that mediates disputes between the state and a citizen in regard to social welfare programs and between the state and manufacturers in regard to regulation of commercial activity.

A Loss of Values?

The reforms in Western law have been assessed positively by some, negatively by others. The reforms range across such a broad spectrum of issues that it may be unrealistic to pose the question of assessment without breaking it down into the various fields of law involved. Broad governmental involvement in economic matters has perhaps drawn the most negative evaluation.

Friedrich Hayek, focusing on the economic issues, argues that introduction of an ideal of economic equality threatens legal order and results in totalitarianism:

As is becoming clear in ever increasing fields of welfare policy, an authority instructed to achieve particular results for the individuals must be given essentially arbitrary powers to make the individuals do what seems necessary to achieve the required result. Full equality for most cannot but mean the equal submission of the great masses under the command of some élite who manages their affairs. While an equality of rights under a limited government is possible and an essential condition of individual freedom, a claim for equality of material position can be met only by a government with totalitarian powers.⁸

Hayek views governmental guarantees of equality as requiring governments to direct the lives of all citizens in ways incompatible with individual liberty:

The idea that men ought to be rewarded in accordance with the assessed merits or deserts of their services ‘to society’ presupposes an authority which not only distributes these rewards but also assigns to the individuals the tasks for the performance of which they will be rewarded. In other words, if ‘social justice’ is to be brought about, the individuals must be required to obey not merely general rules but specific demands directed to them only. The type of social order in which the individuals are directed to serve a single system of ends is the organization and not the spontaneous order of the market, that is, not a system in which the individual is free because bound only by general rules of just conduct, but a system in which all are subject to specific directions by authority.⁹

André Tunc, reading the history differently from Hayek, finds that the socialist-oriented adaptations in Western law have not caused harm, but have been beneficial. Tunc discussed the phenomenon of mutual adaptation between East and West. Referring to Western law as “liberal law,” Tunc wrote:

Liberal law is becoming socialized and socialist law is becoming liberalized: . . . They have adapted themselves to circumstance, . . . [T]o be sure, to remedy one evil one may introduce a greater evil. Some regret the evolution of the liberal economy. There is every reason to think, however, that the two evolutions, on the whole, have been beneficial. Liberal law and socialist law are evolving in an effort at humanization.¹⁰

Berman characterizes the path Western law has taken – in part, in response to Soviet law – as a “turn toward collectivism in the law, toward emphasis on state and social property, regulation of contractual freedom in the interest of society, expansion of liability for harm caused by entrepreneurial activity, a utilitarian rather than a moral

attitude toward crime.” In this turn in Western law, Berman sees a danger that important values that have developed in Western law may be lost. Berman expresses concern over “a substantial break with the individualism of the traditional law, a break with its emphasis on private property and freedom of contract, its limitations on liability for harm caused by entrepreneurial activity, its strong moral attitude toward crime, and many of its other basic postulates.”¹¹

In Europe, the risk to traditional legal values stems from central intervention, not only at the national level, but at the supranational as well. The European Commission, as the executive arm of the European Union, issues directives that are binding on member states of the European Union. A new supranational quasi-state entity intervenes, over and above the existing intervention.

This process may accelerate in future decades, in Europe and beyond. The controls imposed on manufacturers as they acquired the capacity to injure large numbers of consumers may well be imposed at the supranational level as manufacturers come to possess the capacity to injure consumers worldwide. Industrial pollution that has evoked regulation by governments is beginning to evoke supranational regulation. In an age in which an operator of a nuclear power generating station may, through inadvertence, ruin the crops of an entire continent, supranational supervision may be needed. Some industry may even come to be operated by supranational institutions, a development that is commencing with the prospect of supranational regulation of deep sea mining in the 1982 Law of the Sea Convention.¹²

An increase in supranational regulation, at the same time, poses difficulties for the Western legal tradition. The law that will be applied in Western states will not be entirely of the making of each state. It will be developed in conjunction with other states – which may or may not be of the Western legal tradition. This danger is minimized, to a considerable extent, by the fact that Western legal values have spread via colonialism and by the fact that these values have, to a large extent, informed the norms developed at the supranational level.

A preservation of rule of law values may not be incompatible with the twentieth century modifications in Western law. Authoritarianism may not be the inevitable consequence of law reforms that seek equality of citizens and a social safety net. And such an effort counters the risk of overbearance on individuals from private groupings with economic power. That, indeed, provided the impetus for government regulation. So the choice is not one between a free society in which government plays a minimal role and a society in which the individual is subservient to an overbearing government. The choice is between a society in which private groupings may control individuals and one in which government endeavors to stop such private control, albeit at the risk that the government may become overbearing.

The changes in Western law were, in large measure, necessary to account for societal changes brought about by the industrial revolution. Changes in law went further and came faster in Soviet Russia than elsewhere in the West and spurred change there. It was necessary to impose liability on entrepreneurs when their technological capacity for causing harm had increased exponentially. A manufacturer distributing food or medicine to millions of people posed a greater threat than the craftsmen-manufacturers of the eighteenth century. As industrial enterprises reached monopoly status in their fields, a need arose to restrict their contractual freedom lest they victimize society in pursuit of profit. Governments needed to exert administrative regulation over manufacturing to protect the public health.

There is, to be sure, a risk of an overbearing state once the state takes upon itself a major role in the social life of the country. But the nineteenth century system carried the risk that those with preponderant financial means could use the structure of rights afforded by law to the detriment of those without means. The age of the capitalist robber barons was one that governments could ill afford to perpetuate. There is risk regardless of which style of governance is followed.

One finds in Marxist legal thought a negation of a need for rights – a view that economic equality suffices to protect human well-being

and that all law (including rights) will disappear.¹³ Yet that view is certainly not inevitable within a Marxism frame of reference. One can acknowledge the significance of economic equality without discarding rights. The fact that the formal equality Marx saw in bourgeois law did not result in factual equality does not mean that once economic equality is instituted one should discard rights.

There is, as well, a danger that a view of law as an instrument for social policy may lead to cynicism about law.¹⁴ Law is, perhaps, more likely to be observed, rights more likely to be protected, if all in a society view the law as a body of norms possessing a certain inevitability. If law is seen as an instrument to force landlords to provide safety from fire in tenements, or to restrain corporations from monopolizing a field of trade, then perhaps law will come to be seen as a phenomenon that changes with each new development in society and will not, therefore, be respected.

There may, indeed, be danger in such a use of law. It is a risk, however, that Western societies have chosen to run. When a need emerges in society for protection from a harm, government may not turn its back on the situation out of fear that using law to provide a remedy may detract from respect for law.

The problem is not how to avoid use of law in ways that may diminish respect for it, but how to incorporate the new role of law without loss of values worth preserving. There is no reason that the changes in substantive law that have come about in imitation of or in reaction to socialism cannot be incorporated into legal institutions that can protect individual rights. Judicial independence has not been adversely affected.¹⁵ An expanding role for the state can be incorporated into the Western legal tradition without loss of moorings.

The Impact of Change

LAW DID NOT WITHER AWAY IN THE WEST, BUT IMPORTANT innovations were introduced, turning the law in directions that brought features commonly identified as distinguishing the law of the twentieth century from that of the nineteenth. The state assumed a role in society it had not previously taken. The state came to be responsible for the well-being of the citizenry in many aspects of life: for ensuring delivery of health care, for ensuring full employment, for providing security in old age.

The state also came to be responsible for ensuring the equality of citizens, not only before state agencies, but in the realm of relations between individuals and business entities. Discrimination on the basis of race or other status came to be prohibited, whether by the state or by employers. Even when by private employers, the state was viewed as having a responsibility. The state should not allow discrimination by private employers.

The state took on responsibility for the safety of workers from hazards on the job, from the vicissitudes of the market that might result in employment. A worker dismissed by an employer would be entitled to be paid a salary for a time after being dismissed, by way of unemployment compensation.

The state provided for a “safety net” for the citizenry, to avert extreme poverty. Although this responsibility came to be handled

The Impact of Change

variously in different Western countries, a general obligation of the state was recognized.

The Route of Change

No one has a patent on ideas. They move from place to place and are actualized in ways that are not always traceable. Numerous innovations in Soviet law – innovations in that they departed from legal rules that obtained in Russia and elsewhere at the time – were later replicated through the Western world. In some instances, one can trace a line of public discussion, or policy declarations, that suggest the significance of the Soviet innovation for the change that we introduced. In other instances, at least from accessible sources, no line of transmission can be traced.

Many of the ideas reflected in the Soviet legal innovations had been aired before the Bolsheviks came to power. As we saw in Chapter 1, Marxism had exerted an influence from the middle years of the nineteenth century. As we also saw, there was official, even legislative, reaction to various social ills that accompanied the industrial revolution that had nothing to do with social thought along socialist lines, or with reacting against such thought.

The ideas the Bolsheviks espoused, moreover, were ideas that originated less in Russia than in Western Europe, because it was there that the industrial revolution took hold, and there that the social ills associated with industrialization were first noticed. The implementation of those ideas in concrete legislative form in Soviet Russia likely added to the potency of these ideas. Certainly, many in the West read them, understood them, and discussed them in the context of advocating policy change in the West. Soviet legal academics and politicians actively promoted the Soviet ideas as the Cold War adversaries engaged in a battle of concepts.

How strong a line of transmission may have been in particular instances cannot be ascertained. In certain instances, and these are recounted in some of the chapters in Parts II and III, evidence is available that suggests that the Soviet innovation played a role in change that came later in the West. The evidence is strongest in regard to changes in international law because, there, the Soviet government was part of the process through which change occurred; for example, with international criminal trials, the concept of individual responsibility for a war of aggression, or the twelve-mile territorial sea. But even on matters of domestic law, the Soviet government pushed its positions, as for example, at the United Nations, when human rights treaties were drafted dealing with economic and social rights.

To be sure, the fact that the Soviet government promoted a position that was later adopted does not necessarily mean that its promotion of the position played a role in the decision to follow that position. And even if the Soviet example played a role, there may have been additional factors at work.

The Soviet government's failure to follow through on many of the early innovations, its repudiation of certain of them, and even the substantial departure from legality reflected in mass arrests did not negate the potential impact of the Soviet innovations outside the USSR.

The American journalist Lincoln Steffens famously remarked in 1921, after visiting Soviet Russia, "I have been over into the future, and it works."¹ Had Steffens visited in 1951, instead of 1921, he might have evaluated differently. The marriage legislation that was aimed at making women and men equal in marriage had brought women into public roles, but not on a par with men. In the home, Soviet men of the 1950s did little more house chores or infant-tending than had their fathers and grandfathers. By then as well, arbitrary detention had created a huge network of labor camps that inflicted untold suffering.

Whether it did or did not "work," in Steffens' phrase, the Soviet approach on a range of issues became part of the discussion of social policy. The Soviet innovations were widely chronicled in the West.

The Impact of Change

Some in the West became enamored of the Soviet approach in general. Others found merit in particular legal policies. Still others viewed the policies with trepidation.

The industrial revolution created new social relations that gave rise to new ideas about the role of government and law. Law came to provide protections to workers, to tenants, to consumers of products made by corporations. The entry of large numbers of women into the industrial work force laid the base for a consciousness about gender equality. The implementation of these ideas in legislative form in Soviet Russia was a reflection of those ideas but, in turn, it likely spurred further development.

Soviet law would seem to have had an impact in the West, and this as a result of two factors. One was the strength of the ideas being expounded in the early post-Revolution period. Those ideas held the prospect of a better life at a time when the existing order in the West seemed wanting. Domestic constituencies in the West lobbied for reform along the lines outlined by the Bolsheviks.

The second was the Cold War that developed after World War II. The Cold War increased pressure on the West to respond to the Soviet ideas, in the interest of marshaling the forces of the West and of drawing the third world to its side. Western governments feared that if they did not address the Soviet challenge, they might be unseated. The West reacted with alarm to the ideas the Soviets shot in their direction. To stave off forces like those that had overthrown the tsar, they adjusted their approach to governance.

Does an Influence Matter?

One can fairly ask whether it matters that Western law today embodies so much that appeared first in Soviet law. This development might be simply an historical curiosity. On the other hand, the analysis of how legal change occurs is instructive in the same way as is analysis of any

historical development. Historians strive to understand not only what occurred in the past, but how and why various events occurred. Why did a particular war take place? Why did an empire fall? The answers do not change history, but the inquiry satisfies a felt need to understand how we came to our present situation. The answers may be indicative for policy-makers of the future.

If we are to understand our law, it is helpful to understand how it came to be. Such an understanding may not tell us whether to retain or discard a particular rule or norm, but one can discard more knowledgeably backed by an understanding of how and why it was decided originally to take up the rule or norm.

The interplay between Western law and the law promoted by the Bolsheviks reveals a complexity that makes it difficult to speak of them as separate systems and then to discuss whether one affected the other. The ideas that inspired Soviet law emanated from the West, from the industrial revolution that took place in the West, and from ideas developed in the West in reaction to the industrial revolution.

The Soviet legislative innovations of the 1920s provide a remarkable blueprint for legal reforms that entered Western law later in the twentieth century. Whether they are traceable to the Soviet experience cannot be proven with mathematical precision. Other currents of thought may have been at play with regard to particular issues. Marxist ideas had exerted an influence, as we saw in Chapter 1, even prior to the Bolshevik Revolution and might have continued exerting an influence even had there been no revolution in Russia. Moreover, the social effects of the industrial revolution that gave rise to Marxism might, even in the absence of Marxism, have brought about many of the changes in Western law.

That said, Western law at the turn of the twenty-first century had changed sharply from Western law at the turn of the twentieth. Much of what is viewed as “modern” in the law first appeared, in the form of ideas and in the form of legislated law, in Soviet Russia.

The Impact of Change

From a perspective that starts with the publications of Marx's writings, the political and legal orders of the countries of the world have moved far from the privatization model of the early nineteenth century. They have traveled in the direction of socialization of control over productive resources. The West introduced government intervention in many fields of economic and social life. These reforms dulled the sharper negative aspects of the industrial revolution.

When one has declared victory over an enemy, it is not popular to acknowledge that we may have been influenced by the enemy. Despite its rejection of Soviet concepts, the West absorbed many of them. Before the seventy Soviet years had run their course, the world had changed. And that change was, in some measure, in response to the ideas of the Soviets.

Notes

PREFACE

1. Robert Service, *Lenin: A Biography* (Cambridge MA: Harvard University Press, 2000), pp. 63–83. Bertram D. Wolfe, *Three Who Made a Revolution: A Biographical History* (New York: Dell Publishing, 1974), pp. 85–87.

1. THE INDUSTRIAL REVOLUTION AND THE LAW

1. Robert Murray, *Red Scare: A Study in National Hysteria, 1919–1920* (New York: McGraw-Hill, 1964), p. 15.
2. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge MA: Harvard University Press, 1983), pp. 24–25.
3. Harold J. Laski, *The Strategy of Freedom: An Open Letter to American Youth* (New York: Harper, 1941), p. 57.
4. Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins Press, 1967), pp. 3–43.
5. Karl Marx and Friedrich Engels, “Communist Manifesto,” in Arthur P. Mendel, ed., *Essential Works of Marxism* (New York: Bantam, 1977), p. 13, at p. 19.
6. Karl Marx, *Capital*, chap. 13 (New York: Modern Library, 1906).
7. Maurice Walton Thomas, *The Early Factory Legislation: A Study in Legislative and Administrative Evolution* (London: Thames Bank, 1948), pp. 14–33.
8. Gerhard A. Ritter, *Social Welfare in Germany and Britain: Origins and Development*, trans. from German by Kim Traynor (Leamington Spa & New York: Berg, 1986), p. 34.
9. Anton Menger, *Das bürgerliche Recht und die besitzlosen Volksklassen*, (Tübingen, H. Laupp, 1890).
10. Roscoe Pound, *Jurisprudence* (St. Paul: West, 1959), vol. 1, pp. 310–11.

11. Karl Renner, *Institutions of Private Law and Their Social Function* (London: Routledge, 1949; first published 1904).
12. Reginald Heber Smith, *Justice and the Poor*, 2nd ed. (New York: Scribner, 1921); Edward Abbott Parry, *The Law and the Poor* (London: Smith, Elder, 1914).
13. Frank Rennell Bruel, “Social Welfare,” in *Encyclopedia Britannica* (1965) vol. 20, p. 907B.
14. Antony Alcock, *History of the International Labor Organization* (New York: Octagon, 1971), p. 8. Philippa Watson, *Social Security Law of the European Communities* (London: Mansell, 1980), p. 6.
15. Arthur Venn Dicey, *Law and Public Opinion in England During the Nineteenth Century* (London: Macmillan, 1962), pp. 259–302.
16. John A. Hobson, *The Evolution of Modern Capitalism* (London: Allen & Unwin, 1926), p. 484.
17. Klaus Misgeld, Karl Molin, and Klas Armark, eds. *Creating Social Democracy: A Century of the Social Democratic Labor Party in Sweden* (University Park PA: Pennsylvania State University Press, 1992). Susan Miller and Heinrich Potthoff, *A History of German Social Democracy from 1848 to the Present* (New York: St. Martin’s Press, 1986).
18. *Interstate Commerce Act* (1887), *U.S. Statutes at Large*, 24: 379.
19. *Sherman Act* (1890), *U.S. Code*, Title 15, sec. 1.
20. U.S. Congress, *Congressional Record* (March 21, 1890): 2460.
21. John D. Buenker, John C. Burnham, and Robert M. Crunden, *Progressivism* (Cambridge MA: Schenkman Publishing, 1977), p. v.
22. Howard Zinn, *A People’s History of the United States* (New York: Harper & Row, 1980), p. 346.
23. Roscoe Pound, *Jurisprudence* (St. Paul MN: West, 1959) vol. 1, p. 311.
24. *Lochner v. New York*, 198 U.S. 45 (1905).

2. ECONOMIC NEEDS AS LEGAL RIGHTS

1. Friedrich Engels, “Socialism: Utopian and Scientific,” in Karl Marx and Friedrich Engels, *Basic Writings on Politics & Philosophy*, ed. Lewis Feuer (Garden City NY: Doubleday, 1959), p. 90.
2. I. Podvolotskii, “Civil Liberties: A Bourgeois Deception,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967; originally published 1923), p. 118, at p. 120.
3. Piers Beirne and Alan Hunt, “Law and the Constitution of Soviet Society: The Case of Comrade Lenin,” *Law & Society Review* 22: 575, 580 (1988).
4. Podvolotskii, p. 120.
5. SU RSFSR, no. 93, item 512 (1920).

6. Dekret o zemle [Decree on the Land], SU RSFSR, no. 1, item 3 (1917).
7. Civil Code, 1922, art. 21.
8. F. I. Kalinychev, *Sovetskoe zakonodatel'stvo v period stroitel'stva kommunizma* [Soviet Legislation in the Period of the Construction of Communism] (Moscow: Thought, 1966), pp. 10–11.
9. Civil Code, 1922, art. 1.
10. Civil Code, 1922, art. 147.
11. Labor Code 1918, art. 10.
12. Tony Honoré, *The Quest for Security: Employees, Tenants, Wives* (London: Stevens, 1982), pp. 1–33.
13. Labor Code 1918, art. 46. Labor Code 1922, art. 46.
14. All-Russian Central Executive Committee, art. 1, art. 46, SU RSFSR, no. 13, item 188 (1918). Statute on Social Insurance for Workers, SU RSFSR, no. 89, item 906 (1918).
15. Labor Code 1918, art. 78, and accompanying Rules on Issuance of Stipends to Workers in Time of Illness. Decree of Council of People's Commissars, SU RSFSR, no. 25, item 286, (1919). Council of People's Commissars, arts. 1–2, SU RSFSR, no. 74, item 343 (1920). All-Union Central Executive Committee and Council of People's Commissars, SZ SSSR, no. 4, item 33 (1928).
16. On Insurance for Unemployment, All-Russian Central Executive Committee, SU RSFSR, no. 8, item 111 (1917). Labor Code 1918, art. 79, and annexed Rules on the Unemployed and on Payment to Them of Subsidies.
17. Labor Code 1918, art. 78, and annexed Rules on Issuance of Stipends to Workers in Time of Illness. Decree of Council of People's Commissars, SU RSFSR, no. 25, item 286 (1919). Council of People's Commissars, arts. 1–2, SU RSFSR, no. 74 item 343 (1920). All-Union Central Executive Committee and Council of People's Commissars, SZ SSSR, no. 4, item 33 (1927).
18. Beirne and Hunt, at 597.
19. Labor Code 1918, art. 84.
20. On Preparation for Introduction of a 7-Hour Work Day, Council of People's Commissars, SZ SSSR, no. 8, item 72 (1928), and no. 16, item 139 (1928).
21. All-Union Central Executive Committee and Council of People's Commissars, art. 1, SZ SSSR, no. 57, item 429 (1925).
22. On Spa Treatment for Workers and on Utilization of Spas, Council of People's Commissars, SU RSFSR, no. 12, item 118 (1922).
23. On Worker Faculties, Council of People's Commissars, SU RSFSR, no. 80, item 381 (1920).
24. Council of People's Commissars, arts. 2, 6, SU RSFSR, no. 48, item 568 (1918).

25. Statute on Conciliation Courts and Arbitration Tribunals, art. 1, SU RSFSR (1922), no. 45, item 560 (1922).
26. Enactment of the All-Russian Central Executive Committee and the Council of People's Commissars on Workers' Control, art. 1, SU RSFSR, no. 3, item 35 (1917).
27. Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939), pp. 94–95.
28. Harry Schwartz, *Russia's Soviet Economy* (New York: Prentice-Hall, 1954), p. 517–18.
29. Basil Dmytryshyn, *USSR: A Concise History* (New York: Scribner, 1971), p. 165. Maurice Dobb, *Soviet Economic Development Since 1917* (New York: International Publishers, 1966), p. 191.
30. Constitution 1936, art. 119.
31. Constitution 1936, art. 120.
32. Constitution 1936, art. 121.
33. August Bebel, "Prostitution a Necessary Social Institution of the Capitalist World," in August Bebel (trans. Daniel De Leon), *Woman Under Socialism* (New York: Schocken Books, 1971; originally published 1904), p. 160.
34. People's Commissariat of Labor and Social Insurance, All-Russian Central Council of Trade Unions, Supreme Council of the National Economy, art. 1, SU RSFSR, no. 18, item 203 (1922).
35. Council of People's Commissars, art. 23, SU RSFSR, no. 89, item 906 (1918).
36. Protection of Nursing Mothers, People's Commissariat of Labor and People's Commissariat of Health, arts. 2, 3, SU RSFSR, no. 89, item 456 (1920).
37. Protection of Expectant and Nursing Mothers, People's Commissariat of Labor and All-Russian Central Union of Trade Unions, arts. 1, 2, SU RSFSR, no. 91, item 477 (1920).
38. Constitution 1936, art. 122.
39. L. Uspenskii, "Economic Rights under Socialism," in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967), pp. 227–33 (excerpted from Uspenskii's article, "Pravo i sotsializm" [Law and Socialism], *Vestnik Iustitsii Uzbekistana* [News of Uzbekistan Justice] 2–3: 21–32 (1925).
40. A. Allan Bates, "Low Cost Housing in the Soviet Union," in "Industrialized Housing: Materials Compiled and Prepared for the Subcommittee on Urban Affairs of the Joint Economic Committee," Congress of the United States (1969), 91st Cong., 1st sess., 1969, p. 1.
41. SU RSFSR, no. 1, item 13 (1917) (October 30, 1917, Julian calendar). John N. Hazard, *Soviet Housing Law* (New Haven: Yale University Press, 1939) p. 5.

42. SU RSFSR, no. 35, item 351 (1919).
43. Hazard, p. 6.
44. On Elimination of Payment for Housing from Workers and Employees, Council of People's Commissars, SU RSFSR, no. 6, item 47 (1921).
45. On Payment for Apartments, All-Union Central Executive Committee and Council of People's Commissars, SZ SSSR, no. 44, item 312 (1926).
46. SZ SSSR, no. 5, item 60 (1924), explained in Hazard, pp. 23–24.
47. On Payment for Apartments, All-Union Central Executive Committee and Council of People's Commissars, SZ SSSR, no. 44, item 312 (1926). Hazard, p. 5.
48. On Social Insurance for Members of Families of Workers upon Death of a Family Breadwinner, Council of People's Commissars, SU RSFSR, no. 79, item 681 (1921).
49. Mark Field, *Soviet Socialized Medicine* (New York: Free Press, 1967), p. 61.

3. EQUALITY IN THE FAMILY

1. Max Rheinstein, "The Law of Family and Succession," in Athanassios N. Yiannopoulos, ed., *Civil Law in the Modern World* (Baton Rouge: Louisiana State University Press, 1965), p. 33.
2. Mary Ann Glendon, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (Chicago: University of Chicago Press, 1989), p. 291.
3. Gisbert H. Flanz, *Comparative Women's Rights and Political Participation in Europe* (Dobbs Ferry NY: Transnational, 1983), p. 65.
4. France, Civil Code of 1804, art. 213.
5. Civil Code of 1804, art. 214. André Tunc, "Husband and Wife under French Law: Past, Present, and Future," *University of Pennsylvania Law Review* 104: 1064, at 1068 (1956).
6. Civil Code of 1804, arts. 215, 217.
7. Alkis Algyriadis, "Greek Law," in A. G. Chloros, ed., *The Reform of Family Law in Europe* (The Equality of the Spouses – Divorce – Illegitimate Children) (Deventer: Kluwer, 1978), p. 139, at p. 141.
8. V. I. Sinaiskii, *Lichnoe i imushchestvennoe polozhenie zamuzhnei zhenshchiny v grazhdanskom prave (s prilozheniem deistvuiushchikh russkikh zakonov, senatskoi praktiki i ukazatel'ia russkoi literatury)* [The personal and property position of a married woman in civil law (with an annex on Russian laws in force, case law of the Senate and an index of Russian literature)] (Iuriev and Dorpat: C. Mattiesen Publisher, 1910), p. 278.
9. Germany, Civil Code, 1900, art. 1354.
10. Jacques Foyer, "The Reform of Family Law in France," in Chloros, p. 79.

11. Switzerland, Civil Code, 1907, art. 160.
12. Netherlands, Civil Code, 1838, art. 160, on which see Herman Cohn, compiler, *The Foreign Laws of Marriage and Divorce: Part I: The Countries of the European Continent* (Tel Aviv: Palestine Publishing Company, 1937), p. 149.
13. Netherlands, Civil Code, 1838, art. 161.
14. Austria, Civil Code, 1811, arts. 91–92.
15. Germany, Civil Code, 1900, arts. 1358, 1363.
16. Netherlands, Civil Code, 1838, art. 160.
17. Switzerland, Civil Code, 1907, art. 161. Germany, Civil Code, 1900, art. 1355, on which see Glendon, *Transformation of Family Law*, p. 131.
18. Amendment of February 9, 1922, in Cohn, *Foreign Laws of Marriage and Divorce*, p. 161.
19. Glendon, *Transformation of Family Law*, p. 129.
20. Switzerland, Civil Code, 1907, art. 161.
21. Act of May 15, 1918, in Cohn, *Foreign Laws of Marriage and Divorce*, p. 161.
22. Mary Ann Glendon, *State, Law and Family: Family Law in Transition in the United States and Western Europe* (Amsterdam: North-Holland Publishers, 1977), p. 202.
23. Matrimonial Causes Act, 1857, on which see *ibid.*, p. 192.
24. Germany, Civil Code, 1900, former arts. 1564–87, on which see *ibid.*, p. 216.
25. Max Rheinstein, *Marriage Stability, Divorce, and the Law* (Chicago: University of Chicago Press, 1971), p. 141.
26. G. M. Sverdlov, *Sovetskoe semeinoe pravo* [Soviet family law] (Moscow: State Publishing House of Legal Literature, 1958), pp. 54–55.
27. *Svod zakonov grazhdanskikh* [Code of Civil Laws], *Svod zakonov*, vol. 10, part 1, book 1, art. 107.
28. *Ibid.*, art. 102.
29. *Ibid.*, art. 101.
30. *Ibid.*, art. 103.
31. *Ibid.*, art. 2202.
32. K. Pobedonostsev, *Kurs grazhdanskago prava* [Course in Civil Law] (Saint Petersburg: Synod Tipography, 1896), vol. 2, p. 112.
33. Dekret o grazhdanskom brake, o detiakh i o vedenii knig aktov sostoiianiia [Decree on civil marriage, on children and on keeping civil status record books], SU RSFSR, no. 11, item 160 (1917).
34. Dekret o rastorzhenii braka [Decree on dissolution of marriage], art. 1, SU RSFSR, no. 10, item 152 (1917).
35. *Ibid.*, art. 6.
36. *Ibid.*, art. 2 (note).
37. Family Code 1918. J. Quigley, “The 1926 Soviet Family Code: Retreat from Free Love,” *Soviet Union*, No. 6, 166–174 (1979). Harold J. Berman, “Soviet

- Family Law in the Light of Russian History and Marxist Theory,” *Yale Law Journal* 56: 26–57 (1946).
38. Family Code 1918, art. 70.
39. Family Code 1918 code, arts. 85–99.
40. Family Code 1918, art. 103.
41. Family Code 1918, art. 100. “Familia suprugov” [Surname of spouses], *Ezhenedel’nik sovetskoi iustitsii* [Soviet Justice Weekly] 41: 939 (1923).
42. Family Code 1926, art. 7.
43. Family Code 1918, art. 104.
44. Family Code 1918, art. 150.
45. Family Code 1918, art. 105.
46. Karl Marx and Friedrich Engels, “The Communist Manifesto,” in A. Mendel, ed., *Essential Works of Marxism* (New York: Bantam, 1971), pp. 29–30. Frederick Engels, *The Origin of the Family, Private Property and the State In the Light of the Researches of Lewis H. Morgan* (New York: International Publishers, 1972).
47. Karl Marx and Friedrich Engels, *The Communist Manifesto* (New York: Washington Square Press, 1971), p. 89.
48. Engels, *The Origin of the Family, Private Property and the State*, p. 125.
49. *Ibid.*, p. 144.
50. *Ibid.*, pp. 138–39.
51. August Bebel (trans. Daniel De Leon), *Woman Under Socialism* (New York: Schocken Books, 1971; originally published 1904).
52. Alexandra Kollontai, *Sexual Relations and the Class Struggle, Love and the New Morality* (Montpelier VT: Falling Wall Press, 1972; originally published 1919).
53. Quoted in Sverdlov, p. 55.
54. *Ibid.*, p. 55.
55. A. Zelenetskii, “O nashe brachnom proekte,” *Proletarskaia revoliutsiia i pravo* [Proletarian revolution and law] 15: 12–20 (1921). I. Slavin, “Brak i sem’ia po nashemu zakonodatel’stvu [Marriage and Family under Our Legislation],” *Ezhenedel’nik sovetskoi iustitsii* [Soviet Justice Weekly] 42: 3–5 (1922).
56. Nekrasov, “Ot staroi sem’i k novoi,” *Pravda* (no. 189, 1923), quoted in Z. Tettenhorn, “Zakonodatel’stvo o brake i sem’e,” *Vlast’ sovetov* [Soviet Power], nos. 8–9: 25 (1923).
57. Family Code 1926, art. 10.
58. Dmitrii I. Kurskii, quoted in Rudolf Schlesinger, ed., *Changing Attitudes in Soviet Russia: The Family in the U.S.S.R.: Documents and Readings* (London: Routledge & Paul, 1949), p. 116.
59. Family Code 1926, arts. 1, 2, 3, 11, 12, 16.
60. Family Code 1926, art. 14.

61. Family Code 1926, art. 15.
62. Schlesinger, p. 151.
63. John N. Hazard, “Law and the Soviet Family,” *Wisconsin Law Review*, p. 224 (1939).
64. V. I. Lenin, “International Women’s Day, 1918,” in *The Woman Question: Selections from the Writings of Karl Marx, Frederick Engels, V. I. Lenin, Joseph Stalin* (New York: International Publishers, 1951), p. 46.
65. Quoted in A. M. Belyakova, *Soviet Legislation on Women’s Rights: Collection of Normative Acts* (Moscow: Progress, 1978), p. 14.
66. Leon Trotsky, *The Revolution Betrayed: What Is the Soviet Union and Where Is It Going?* (New York: Pioneer Publishers, 1945), p. 144.

4. CHILDREN AND THE LAW

1. Family Code 1918, art. 144.
2. Family Code 1926, art. 32.
3. Family Code 1918, art. 183.
4. G. Ryndziunskii, “Tezisy k teme ‘Semeinoe i nasledstvennoe pravo,’” *Rabochii sud* 37–38: 1395 (1925).
5. Decree of the All-Russian Central Executive Committee and the Council of People’s Commissars, Ob izmenenii Kodeksa Zakonov ob aktakh grazhdanskogo sostoiianiia, brachnom, semeinom i opekunskom prave [On amending the Code of Laws on Acts of Civil Status, Marriage, Family, and Guardianship Law], SU RSFSR, no. 13, item 101 (1926).
6. Family Code 1918, art. 133.
7. Joseph M. Thomson, “English Law,” in A. G. Chloros, ed., *The Reform of Family Law in Europe* (The Equality of the Spouses – Divorce – Illegitimate children) (Deventer: Kluwer, 1978), p. 64.
8. M. Planiol and G. Ripert, *Traité pratique de droit civil français* (Paris: Librairie Générale de Droit & de Jurisprudence, 1928), vol. 4, p. 116. Crane Brinton, *French Revolutionary Legislation on Illegitimacy 1789–1804* (Cambridge MA: Harvard University Press, 1936), p. 26.
9. Civil Code, 1804, arts. 756–57. Planiol and Ripert, p. 117.
10. Jacques Foyer, “The Reform of Family Law in France,” in Chloros, p. 93.
11. Alexandra Kollontai, *Sexual Relations and the Class Struggle, Love and the New Morality* (Bristol: Falling Wall Press, 1972; originally published 1919), p. 16.
12. J. Quataert, *Reluctant Feminists in German Social Democracy 1885–1917* (Princeton NJ: Princeton University Press, 1979), p. 40.
13. G. Rimlinger, *Welfare Policy and Industrialization in Europe, America, and Russia* (New York: John Wiley Sons, 1971), pp. 250–51.
14. Labor Code 1922, art. 132.

15. Ulozhenie o nakazaniiaxh [Enactment on punishment], art. 1462, Svod zakonov 15: 160.
16. *Roe v. Wade*, 410 U.S. 113, 141 (1973).
17. Decree of the People's Commissariat of Health and the People's Commissariat of Justice of the RSFSR, Nov. 18, 1920, Circular of the People's Commissariat of Justice, RSFSR, 1920, no. 37, SU RSFSR, no. 90, item 471 (1920), also quoted in M. Grodzinskii, "Plodoizgnanie v sovetskom i inostrannom zakone" [Abortion in Soviet and Foreign Law], *Vestnik Sovetskoi iustitsii* [Gazette of Soviet Justice] 12: 462, at 463 (1926).
18. Criminal Code 1922, art. 146.
19. Criminal Code 1926, art. 140.
20. Grodzinskii, at 464–65.
21. G. Meren, "Iskusstvennoe izgnanie ploda – ubiistvo?" [Artificial Fetal Expulsion – Murder?], *Rabochii sud* [Worker's Court] 22: 1353 at 1358 (1926).
22. Leon Trotsky, *The Revolution Betrayed: What Is the Soviet Union and Where Is It Going?* (New York: Pioneer Publishers, 1945), p. 151.
23. Decree of Central Executive Committee of USSR and Council of People's Commissars, "O zapreshchenii aborta" [Prohibition of Abortion], June 27, 1936, SZ SSSR, no. 34, item 309 (1936).
24. Edict of Presidium of USSR Supreme Soviet, "Ob otmene zapreshcheniia abortov" [On Repeal of the Prohibition of Abortion], November 23, 1955, Vedomosti SSSR, No. 22: item 425 (1955).

5. CRIME WITHOUT PUNISHMENT

1. Jacques Bellon, *Droit Pénal Soviétique et Droit Pénal Occidental: Leur Évolution, Leurs Tendances* (Paris: Éditions de Navarre, 1961), p. 109.
2. N. A. Beliaev and M. D. Shargorodskii, eds., *Kurs sovetskogo ugolovnogo prava (chast' obshchaia)* [Course in Soviet Criminal Law (General Part)], (Leningrad: Leningrad University Press, 1970), vol. 2, pp. 240–41.
3. M. Kozlovskii, "Law and Crime: Their Origin and the Conditions of Their Elimination," in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967, originally published 1918), p. 70.
4. Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (New York: Columbia University Press, 1939), pp. 96–97.
5. Friedrich Engels, *The Condition of the Working-class in England in 1844* (transl. F. K. Wischnewetzky, London: S. Sonnenschein & Co., 1892), p. 115.
6. Rusche and Kirchheimer, pp. 97–100.
7. Pierre Despatys, *Magistrats et criminels, 1795–1844* (Paris: Plon-Nourrit & Co., 1913), pp. 297–98.

8. Rusche and Kirchheimer, pp. 104–105.
9. *Ibid.*, p. 107.
10. Willem Bongers, *Criminality and Economic Conditions* (Boston: Little, Brown & Co., 1916), p. 668.
11. Mary Callcott, *Russian Justice* (New York: Macmillan, 1935), pp. 164–65.
12. Criminal Code 1922, arts. 143–44.
13. SZ SSSR, no. 24 item 32–2, para. “z” (1924).
14. F. I. Kalinychev, *Sovetskoe zakonodatel'stvo v period stroitel'stva kommunizma* [Soviet Legislation in the Period of the Construction of Communism] (Moscow, Thought, 1966), pp. 13–14.
15. Criminal Code 1926, art. 9.
16. Helmut Graupner and Phillip Tahmindjis, eds., *Sexuality and Human Rights: A Global Overview* (New York: Haworth Press, 2005), p. 108.
17. Ulozhenie o nakazaniakh [Enactment on punishments], art. 995, Svod zakonov 15: 102.
18. Frederick Engels, *The Origin of the Family, Private Property and the State In the Light of the Researches of Lewis H. Morgan* (New York: International Publishers, 1972), p. 128.
19. John Lauritsen and David Thorstad, *The Early Homosexual Rights Movement (1864–1935)* (New York: Times Change Press, 1974), p. 52.
20. German Penal Code, art. 175.
21. Lauritsen and Thorstad, p. 59. Edward Bernstein, “Aus Anlass eines Sensationsprozess,” April 26, 1895, *Die Neue Zeit*, no. 32 (1895); “Beurtheilung des widernormalen Geschlechtsverkehrs,” May 6, 1895, *Die Neue Zeit*, no. 34 (1895).
22. Lauritsen and Thorstad, p. 13.
23. *Ibid.*, pp. 60–61.
24. Criminal Code 1922. And see “Protsessy gomoseksualistov” [Trials of homosexuals], *Ezhenedel'nik sovetskoi iustitsii* [Soviet Justice Weekly] 33: 16–17 (1922).
25. Dan Healey, *Homosexual Desire in Revolutionary Russia: The Regulation of Sexual and Gender Dissent* (Chicago: University of Chicago Press, 2001), p. 125.
26. G. A. Batkis, *Voprosy sanitarnoi demograficheskoi statistiki: izbrannie proizvedeniia* [Issues in Sanitary Demographic Statistics: Selected Works] (Moscow: Statistics Publisher, 1964), p. 6.
27. Grigorii Batkis, *Die Sexualrevolution in Russland* (trans. Stefanie Theilhaber, Berlin: Syndikalist, 1928), p. 22. Translation of Grigorii Batkis, *Seksual'naia revoliutsiia v Rossii* [Sexual Revolution in Russia] (Moscow, 1923). See also Lauritsen and Thorstad, p. 64.

28. P. F. Preobrazhenskii, entry “Gomoseksualizm” [Homosexuality] in O. Iu. Shmidt, ed., *Bol'shaia sovetskaia entsiklopedia* [Large Soviet Encyclopedia] (Moscow: Soviet Encyclopedia Company, 1930), p. 595.
29. Laura Engelstein, “Soviet Policy Toward Male Homosexuality: Its Origins and Historical Roots,” in G. Hekma, H. Oosterhuis, and J. Steakley, eds., *Gay Men and the Sexual History of the Political Left* (New York: Haworth Press, 1995), pp. 155, 169.
30. Preobrazhenskii, p. 595.
31. Max Chaleil, *Le Corps prostitué* (Paris: Galilée, 1981), pp. 145–48, 158–61.
32. August Bebel, “Prostitution a Necessary Social Institution of the Capitalist World,” in August Bebel, *Woman Under Socialism* (trans. Daniel De Leon, New York: Schocken Books, 1971, originally published 1904), p. 146.
33. Engels, *Origin of the Family, Private Property and the State*, p. 138.
34. Bongers, p. 342.
35. Ibid., p. 345.
36. Abraham Flexner, *Prostitution in Europe* (New York: American Social Hygiene Association, 1914), p. 85.
37. John F. Decker, *Prostitution: Regulation and Control* (Littleton CO: F. B. Rothman, 1979), pp. 146, 149.
38. Flexner, p. 63.
39. Flexner, p. 82.
40. V. I. Lenin, “The Fifth International Congress Against Prostitution,” in Robert C. Tucker, *The Lenin Anthology* (New York: W. W. Norton, 1975), p. 683 (reprinted from *Rabochaia pravda* [Worker's Truth]). Also in Fannina W. Halle, *Woman in Soviet Russia* (New York: Viking, 1933), pp. 218–19.
41. Tucker, p. 682.
42. Nikolai Bukharin and Evgenii Preobrazhenskii, *The ABC of Communism: A Popular Explanation of the Program of the Communist Party of Russia* (Ann Arbor: University of Michigan Press, 1966; originally published 1919), p. 57.
43. Alfred G. Meyer, “Marxism and the Women's Movement,” in Dorothy Atkinson, Alexander Dallin, and Gail Lapidus, eds., *Women in Russia* (Stanford CA: Stanford University Press, 1977), p. 87.
44. Feiga Blekher, *The Soviet Woman in the Family and in Society: A Sociological Study* (New York: J. Wiley, 1979), p. 10.
45. Alice Withrow Field, “Prostitution in the Soviet Union,” *Nation* 143: 373 (March 25, 1936). Halle, pp. 221, 253.
46. Halle, p. 253. Marion Nelson, “Two Curious Institutions of Soviet Russia,” *Canadian Forum* 14:260, at 261 (no. 163, April 1934).
47. Laurie Annabelle Bernstein, “Sonia's Daughters: Prostitution and Society in Russia” (Ph.D. Diss., University of California, Berkeley, 1987), p. 144.

48. Alexandra Kollontai, “Prostitution and Ways of Fighting It” (Speech, Third All-Russian Conference of Heads of the Regional Women’s Departments, 1921), in Alix Holt, transl. and ed., *Selected Writings of Alexandra Kollontai* (Westport CT: L. Hill, 1977), p. 261, at pp. 263–64.
49. Richard Stites, *The Women’s Liberation Movement in Russia: Feminism, Nihilism, and Bolshevism 1860–1930* (Princeton NJ: Princeton University Press, 1978), p. 183.
50. Nina Nikolaevna Selivanova, *Russia’s Women* (New York: E. P. Dutton, 1923), p. 213.
51. Halle, pp. 220–21.
52. Selivanova, p. 214.
53. Stites, p. 330.
54. Alexandra Kollontai, “Communism and the Family” (1920), excerpted in Rudolf Schlesinger, ed., *Changing Attitudes in Soviet Russia: The Family in the U.S.S.R.: Documents and Readings* (London: Routledge & Paul, 1949), p. 59, at p. 68.
55. Alexandra Kollontai, “Prostitution and Ways of Fighting It,” in Holt, p. 261, at p. 265.
56. Jill Harsin, *Policing Prostitution in Nineteenth-Century Paris* (Princeton NJ: Princeton University Press, 1985), pp. xv–xvi. S. E. Gal’perin, *Prostitutsiia v proshlom i nastoiashchem* [Prostitution in the past and present] (Moscow: Protection of Motherhood and Infants Press, 1928), pp. 14–15. Chaleil, p. 191. Flexner, pp. 112, 121–64.
57. August Bebel, *Woman Under Socialism* (transl. Daniel De Leon, New York: Schocken Books, 1971; originally published 1904), p. 152.
58. Gal’perin, p. 20. Stites, p. 226.
59. Gal’perin, pp. 26–27.
60. Criminal Code 1922, arts. 171–72.
61. Circular of the People’s Commissar of Health (Semashko), No. 21, “O merakh bor’by s prostitutsei (Gubispolkomam dlia vsekh otdelov i gubprofsovetam)” [On Measures for the Struggle against Prostitution (To Province Executive Commissions for all Departments and to Province Trade Union Councils)], January 26, 1923, *Ezhenedel’nik sovetskoi iustitsii* [Soviet Justice Weekly] 16: 381 (1923).
62. Halle, p. 231.
63. Circular of the People’s Commissar of Health (Semashko), No. 21, at 381.
64. Halle, p. 231.
65. Nelson, at 261.
66. Halle, p. 231.
67. William J. Robinson, “News from Other Countries: Russia,” *Journal of Social Hygiene* 19 (4): 228, at 229 (1933).

68. Circular of the People's Commissar of Health (Semashko), No. 21, at 381.
69. Halle, p. 232.
70. Gal'perin, p. 35. "Kak borot'sia s prostitutsiei: Rabota moskovskikh venereologicheskikh dispanserov" [How to Fight Prostitution: The Work of the Moscow Venereal Disease Dispensaries], *Rabochaia gazeta* [Worker's Gazette], February 25, 1925, at p. 8, col. 2.
71. Labor Code 1918, art. 1. Lev Fridland, *S raznykh storon: Prostitutsiia v SSSR* [From Various Sides: Prostitution in the U.S.S.R.] (Leningrad: Red Newspaper, 1931), pp. 146–48.
72. Field, "Prostitution in the Soviet Union," at 373. Circular of the People's Commissar of Health (Semashko), No. 21, at 381. Stites, p. 371. Fridland, p. 146.
73. Halle, p. 224. Vol'f Bronner (an official of the Central Council to Combat Prostitution), *La Lutte Contre la Prostitution en URSS* (Moscow: Society for Cultural Relations between the U.S.S.R. and Foreign Countries, 1936), p. 25.
74. Circular of the People's Commissar of Health (Semashko), No. 21, at 381.
75. Alexandra Kollontai, "Prostitution and Ways of Fighting It," in Holt, p. 261, at pp. 270–71.
76. Wendy Z. Goldman, *Women, the State and Revolution: Soviet Family Policy and Social Life, 1917–1936* (Cambridge and New York: Cambridge University Press, 1993), p. 119.
77. Stites, pp. 372–73. Alice Withrow Field, *Protection of Women and Children in Soviet Russia* (New York: E. P. Dutton, 1932), p. 195. Field, "Prostitution in the Soviet Union," at 373. Rachelle S. Yarros, "Moscow Revisited: Social Hygiene 1930–1936," *Journal of Social Hygiene* 4(23): 200, at 201 (April 1937).
78. Yarros, at 201.
79. Alexandra Kollontai, "Prostitution and Ways of Fighting It," in Holt, p. 261, at p. 265.
80. Circular of the People's Commissar of Health (Semashko), No. 21, at 381. Field, "Prostitution in the Soviet Union," at 373. Yarros, at 200–04.
81. Field, *Protection of Women and Children in Soviet Russia*, pp. 196–19. Yarros, at 205. Nelson, p. 261. Halle, p. 233, 236.
82. Mary Callcott, *Russian Justice* 60–61 (1935).
83. Nelson, p. 261. Gal'perin, p. 38. Yarros, at 201–05. Field, "Prostitution in the Soviet Union," at 374.
84. Yarros, at 205. Nelson, p. 261.
85. Yarros, at 205. Nelson, p. 261. Halle, pp. 244–47. Fridland, p. 48.
86. Field, "Prostitution in the Soviet Union," at 373.
87. Yarros, at 206. Field, "Prostitution in the Soviet Union," at 374.

88. Harold J. Berman, *Justice in the U.S.S.R.: An Interpretation of Soviet Law* (New York: Random House, 1963), p. 56.
89. Criminal Code 1926, art. 154a, as amended at SU RSFSR, no. 15, item 95 (1934).
90. Gail Warshofsky Lapidus, *Women in Soviet Society: Equality, Development, and Social Change* (Berkeley: University of California Press, 1978), p. 113.

6. A CALL TO “STRUGGLING PEOPLE”

1. E. H. Carr, *The Bolshevik Revolution 1917–1923* (Baltimore: Penguin Books, 1951), vol. 1, pp. 427–28.
2. Decree on Peace, SU RSFSR, no. 1, item 2 (1917).
3. Stig Förster, Wolfgang J. Mommsen, and Ronald Robinson, eds., *Bismarck, Europe, and Africa: The Berlin Africa Conference 1884–1885 and the Onset of Partition* (Oxford: Oxford University Press, 1988), p. 533.
4. General Act respecting the Congo, February 26, 1885, *Consolidated Treaty Series*, vol. 165, p. 485.
5. Deklaratsiia prav narodov Rossii [Declaration of the Rights of the Peoples of Russia], SU RSFSR, no. 2, item 18 (1917).
6. J. A. S. Grenville and B. Wasserstein, eds., *The Major International Treaties of the Twentieth Century: A History and Guide with Texts* (London and New York: Routledge, 2001).
7. E. A. Korovin, ed., *Mezhdunarodnoe pravo* [International Law] (Moscow: State Publishing House of Legal Literature, 1951), p. 110.
8. V. I. Lenin, “Odin iz tainykh dogovorov” [One of the secret treaties], *Pravda* 53 (May 23, 1917), reprinted in I. I. Kul’kov, ed., *Lenin o mezhdunarodnoi politike i mezhdunarodnom prave* [Lenin on international politics and international law] (Moscow: Publishing House of the Institute of International Relations, 1958), p. 281.
9. Jane Degras, ed., *Soviet Documents on Foreign Policy* (London: Oxford University Press, 1951), vol. 1, pp. 8–9.
10. Korovin, p. 108.
11. Paul Johnson, *Modern Times: The World from the Twenties to the Nineties* (New York: HarperCollins, 1991), p. 22. George Kennan, *Soviet-American Relations, 1917–1920, Volume One: Russia Leaves the War* (New York: Atheneum, 1967), p. 92.
12. V. I. Lenin, “Imperialism, the Highest Stage of Capitalism,” in Robert C. Tucker, ed., *The Lenin Anthology* (New York: Norton, 1975), p. 210, at p. 234.
13. *Ibid.*, p. 240.
14. Nasim Sousa, *The Capitulatory Regime of Turkey: Its History, Origin, and Nature* (Baltimore: Johns Hopkins University Press, 1933), pp. 179–88.

15. Sousa, p. 202.
16. Kazimierz Grzybowski, *Soviet Public International Law: Doctrines and Diplomatic Practice* (Leyden: A. W. Sijthoff, 1970), p. 10.
17. Korovin, p. 353.
18. V. M. Chkhikvadze, ed., *Kurs mezhdunarodnogo prava* [Course in International Law] (Moscow: Science Publishing House, 1967), vol. 2, p. 87.
19. T. A. Taracouzio, *The Soviet Union and International Law* (New York: Macmillan, 1935), p. 145.
20. Sousa, p. 190.

7. THE WITHERING AWAY OF LAW

1. Nikolai Bukharin and Evgenii Preobrazhensky, *The ABC of Communism: A Popular Explanation of the Program of the Communist Party of Russia* (Ann Arbor: University of Michigan, 1966; originally published 1922), pp. 175–76.
2. Evgenii Pashukanis, *Obshchaia teoriia prava i marksizm* [The General Theory of Law and Marxism] (Moscow: Publishing House of the Communist Academy, 1928), p. 96.
3. Dekret o sude [Decree on the courts], SU RSFSR, no. 4 item 50 (1917).
4. Polozhenie o narodnom sude [Statute on the People's Court], art. 22 (note), SU RSFSR, no. 85, item 889 (1918).
5. Dekret o sude [Decree on the courts], SU RSFSR, no. 4, item 50 (1917).
6. Samuel Kucherov, *The Organs of Soviet Administration of Justice: Their History and Operation* (Leiden: E. J. Brill, 1970), pp. 343–44.
7. Dekret o sude [Decree on the courts], art. 8, SU RSFSR, no. 4, item 50 (1917). Polozhenie o revoliutsionnykh tribunalakh [Statute on Revolutionary Tribunals], SU RSFSR, no. 18, item 132 (1919).
8. Bukharin and Preobrazhensky, p. 223.
9. Polozhenie o sudoustroistve [Statute on Court Structure], SU RSFSR, no. 69, item 902 (1922). M. A. Chel'tsov, ed., *Ugolovnyi protsess* [Criminal Procedure] (Moscow: Legal Literature, 1969), p. 34.
10. Bukharin and Preobrazhensky, p. 221.
11. V. A. Tumanov, "O pravovom nihilizme" [Legal Nihilism], SGP no. 10, p. 21, at pp. 22–23. (1989).
12. Ibid., p. 22.
13. A. G. Goikhsbarg, "The Goals and Methods of the Proletarian Revolution," in Michael. Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967), p. 57. P. Stuchka, "The Last Act of the State: It Withers Away," *ibid.*, p. 240.
14. Tumanov, p. 22.

15. Ibid., p. 22.
16. Pashukanis, p. 105.
17. Tumanov, p. 22.
18. Goikhbarg, “Goals and Methods,” in Jaworskyj, *Soviet Political Thought*, p. 59.
19. Ibid., p. 62.
20. A. G. Goikhbarg, “Justice, the Ideology of Law, and Revolution,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967), p. 121.
21. Ibid., p. 121.
22. I. Naumov, “A Critique of Legal Nihilism,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore, Johns Hopkins University Press, 1967), p. 247, at p. 250.
23. M. Maryasin, “Legal Ideology,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967), p. 294.
24. “Lichnost’ v sotsialisticheskom pravovom gosudarstve” [The Individual in the Socialist State under the Rule of Law], SGP, no. 10, p. 30 (1989) (statement of N. I. Koziubra).
25. Ob obrazovanii obshchесоiuznogo Narodnogo komissariata vnutrennikh del [Establishment of an all-union People’s Commissariat of Internal Affairs], SZ SSSR, no. 36, item 283 (1934).
26. Ob osobom soveshchanii pri Narodnom komissare vnutrennikh del Soiuza SSR [The Special Board of the People’s Commissar of Internal Affairs of the USSR], SZ SSSR, no. 11, item 84 (1935).
27. Samuel Kucherov, *Courts, Lawyers and Trials under the Last Three Tsars* (New York: Praeger, 1953), p. 77.
28. O vnesenii izmenenii v deistvuiushchie ugovorno–protsessual’nye kodeksy soiuznykh respublik [Introduction of Changes in the Existing Criminal-Procedure Codes of the Union Republics], SZ SSSR, no. 64 item 459 (1934).
29. V. S. Tadevosian, “K voprosu ob ustanovlenii material’noi istiny v Sovetskom protsesse” [The Question of Establishing Material Truth in Soviet Procedure], SGP, no. 6, p. 65, at p. 70 (1948).
30. *Khrushchev Remembers*, (transl. Strobe Talbott, Boston: Little, Brown & Co., 1970), p. 512.
31. V. A. Stremovskii, *Uchastniki predvaritel’nogo sledstviia v Sovetskom ugovornom protsesse* [The Participants in the Preliminary Investigation in Soviet Criminal Procedure] (Rostov: Rostov University, 1966), pp. 31–32. Harold J. Berman, *Soviet Criminal Law and Procedure: The RSFSR Codes* (Cambridge MA:

- Harvard University, 1972), p. 47. John Quigley, “Will the Inquisitorial System Wither Away?: Perestroika in the Soviet Lock-Up,” *Public Law Review* (St. Louis University) 8: 123–26 (1989).
32. M. S. Strogovich, “Sovetskoe sotsialisticheskoe pravo – vyschii tip prava” [Soviet socialist law – the highest form of law], in M. P. Kareva, ed., *Teoriia gosudarstva i prava* [Theory of State and Law] (Moscow: State Publishing House of Legal Literature, 1949), p. 348.
33. I. Podvolotskii, “The Withering Away of Law,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967; originally published 1923), pp. 114–17.
34. Tumanov, p. 21.
35. Kucherov, *Courts, Lawyers and Trials under the Last Three Tsars*, p. 114.
36. Uchrezhdeniia dlia upravleniia gubernii [Regulations for Provincial Administration], November 7, 1775, PSZ, vol. 20, no. 14392 (1830), explained in V. O. Kliuchevskii, *Sochineniia* [Works] vol. 5 (*Kurs russkoi istorii* [Course in Russian History], part 5) (Moscow: Publishing House of Social and Economic Literature, 1958), pp. 117–18. See also F. Dmitriev, *Istoriia sudebnykh instant sii i grazhdanskogo appelliatsionnago sudoproizvodstva ot Sudebnika do Uchrezhdeniia o guberniia kh* [History of the Court System and of Civil and Appellate Procedure from the Court Book to the Statute on Provinces] (Moscow: University Typesetter, 1859), p. 525; Richard Wortman, *The Development of a Russian Legal Consciousness* (Chicago: University of Chicago Press, 1976), pp. 13, 26.
37. Wortman, p. 16.
38. A. F. Koni, *Ottsy i deti sudebnoi reformy* [Fathers and Children of the Court Reform] (Moscow: I. D. Sytin, 1914), p. ii. Wortman, pp. 116, 162.
39. A. I. Herzen, “Epilog” (Epilogue), *Sobranie sochinenii* [Collected Works], (Moscow: Publishing House of the Academy of Sciences of the USSR, 1956), vol. 7, p. 251.
40. Herzen, “Epilog.”
41. Uchrezhdenie Sudebnykh Ustanovlenii [Regulation for the Court System], *Svod zakonov*, vol. 16, part 1, sec. 243. Wortman, p. 261.
42. Wortman, p. 276.
43. *Ibid.*, pp. 283–84.
44. Lichnost’ v sotsialisticheskom pravovom gosudarstve [The Individual in the Socialist State under the Rule of Law], SGP, no. 10, p. 30 (1989) (statement of N. I. Koziubra).
45. Tumanov, p. 21.
46. See cases described in Kucherov, *Courts, Lawyers and Trials under the Last Three Tsars*.

8. PANIC IN THE PALACE

1. Convention entre la France et l'Angleterre au sujet de l'action dans la Russie méridionale, in E. L. Woodward and R. Butler, eds., *Documents on British Foreign Policy 1919–1939* (London: H.M. Stationery Office, 1st ser. 1948), vol. 3, p. 369.
2. Louis Fischer, *The Soviets in World Affairs: A History of the Relations Between the Soviet Union and the Rest of the World 1917–1929* (Princeton NJ: Princeton University Press, 1951), vol. 1, p. 82. Peace Treaty between Russia and Germany, Austria-Hungary, Bulgaria and Turkey (Treaty of Brest-Litovsk), March 3, 1918, in J. A. S. Grenville, ed., *Major International Treaties 1914–1973* (London: Methuen & Co., 1974), p. 34.
3. John Cudahy, *Archangel: The American War with Russia* (Chicago: A. C. McClurg & Co., 1924), p. 27.
4. Michael Sayers and Albert E. Kahn, *The Great Conspiracy Against Russia* (New York: Boni & Gaer, 1946), p. 11.
5. Fischer, pp. 121–24.
6. Sayers and Kahn, pp. 12–17. E. H. Carr, *The Bolshevik Revolution 1917–1923* (Baltimore: Penguin Books, 1966), p. 91.
7. FRUS Paris, vol. 3, p. 625 (statement of M. Noulens, former French ambassador to Russia). Cudahy, pp. 47–48, 131.
8. Fischer, p. 127. Sayers and Kahn, p. 28.
9. Cudahy, pp. 47, 72.
10. *Congressional Record*, vol. 57, pt. 4, p. 3260 (February 13, 1919).
11. Cudahy, p. 75.
12. Cudahy, p. 30. Carr, p. 117.
13. Carr, p. 117. Obrashchenie k pravitel'stvam, vedushchim voynu protiv Rossii, s predlozheniem nachat' peregovory o zakliuchenii mira [Appeal to the Governments Waging War Against Russia, with a Proposal to Begin Peace Talks], Sixth All-Russian Congress of Soviets of Worker, Peasant, Cossack and Red Army Deputies, November 8, 1918, in *S'ezdy sovetov soiuza SSR, soiuznykh i avtonomnykh sovetsskikh sotsialisticheskikh respublik: Sbornik dokumentov v trekh tomakh 1917–1936 gg.* [Congresses of Soviets of the USSR, union and autonomous soviet socialist republic: Collection of documents in three volumes 1917–1936] (Moscow: State Publishing House of Legal Literature, 1959), vol. 1, p. 88.
14. Adam Ulam, *A History of Soviet Russia* (New York: Praeger, 1976), pp. 34–36. Georg von Rauch, *A History of Soviet Russia* (New York: Praeger, 1959), p. 92. George Kennan, *Soviet-American Relations, 1917–1920, Volume 2, The Decision to Intervene* (New York: Atheneum, 1967), p. 21. Cudahy, p. 28.

15. Carr, p. 117.
16. *Congressional Record*, vol. 57, pt. 4, p. 3261 (February 13, 1919).
17. Cudahy, pp. 210–11.
18. *Ibid.*, pp. 31–32.
19. *Congressional Record*, vol. 57, pt. 4, p. 3261 (Feb. 13, 1919).
20. Cudahy, p. 37.
21. Ralph Albertson, *Fighting Without a War: An Account of Military Intervention in North Russia* (New York: Harcourt, Brace & Howe, 1920), pp. 74–75. Cudahy, pp. 2–4, 71, 99–100, 159.
22. Cudahy, pp. 161–62.
23. The Secretary of State to Colonel E. M. House, Dec. 2, 1918, FRUS Paris, vol. 2, p. 465.
24. Cudahy, p. 120.
25. Albertson, p. 57. Sayers and Kahn, p. 28. Cudahy, p. 49.
26. *Congressional Record*, vol. 57, pt. 4, p. 3261 (February 13, 1919).
27. *Ibid.*, p. 3260.
28. Albertson, pp. 63–65. Cudahy, pp. 73, 201.
29. *Congressional Record*, vol. 57, pt. 4, p. 3261 (February 13, 1919).
30. Cudahy, pp. 64–65. Albertson, pp. 16–25.
31. FRUS Paris, vol. 3, p. 625 (statement of M. Noulens, former French ambassador to Russia).
32. Cudahy, p. 2.
33. Message from the President, *Congressional Record*, vol. 58, pt. 5, p. 4816 (September 3, 1919).
34. Evan Mawdsley, *The Russian Civil War* (Boston: Allen & Unwin, 1987), p. 49.
35. Cudahy, p. 206.
36. Message from the President, *Congressional Record*, vol. 58, pt. 5, p. 4816 (September 3, 1919). Sayers and Kahn, p. 19.
37. Message from the President, *Congressional Record*, vol. 58, pt. 5, p. 4816 (September 3, 1919).
38. E. Moulis and E. Bergonier, *La Guerre entre Les Alliés et la Russie (1918–1920), Documents réunis* (Paris: Librairie Générale de droit et de jurisprudence, 1937), p. 160.
39. Fischer, pp. 152–55.
40. Cudahy, pp. 56–57.
41. FRUS Paris, vol. 3, pp. 648–49.
42. Carr, pp. 117–18. FRUS 1919: Russia, pp. 15–17 (1943). FRUS Paris, vol. 3, pp. 643–46.
43. *Congressional Record*, vol. 57, pt. 4, p. 3259 (February 13, 1919).
44. *Ibid.*, p. 3261.
45. *Ibid.*, p. 3260.

46. Fischer, p. 74.
47. *Congressional Record*, vol. 58, pt. 2, p. 1864 (June 27, 1919).
48. *Congressional Record*, vol. 58, pt. 5, p. 4897 (September 5, 1919).
49. Albertson, p. 57. Cudahy, p. 169, 210.
50. Cudahy, p. 211.
51. Albertson, p. 59.
52. Albertson, p. 97. Cudahy, p. 72, 209.
53. J. F. N. Bradley, *Civil War in Russia 1917–1920* (New York: St. Martin's Press, 1975), p. 67.
54. Sayers and Kahn, p. 35.
55. Carr, p. 97.
56. FRUS Paris, vol. 3, p. 591.
57. FRUS Paris, pp. 591–92.
58. Central Executive Committee, Dekret ob annulirovanii gosudarstvennykh zaimov [Decree Annulling State Loans], SU RSFSR, no. 27, item 353 (1918), reprinted in *Dekrety sovetskoi vlasti*, [Decrees of Soviet Power], vol. 1 (Moscow: State Publishing House of Political Literature, 1957), p. 386.
59. Kazimierz Grzybowski, *Soviet Public International Law: Doctrines and Diplomatic Practice* (Leyden: A. W. Sijthoff, 1970), pp. 95–96.
60. Exchange of notes at Washington, November 16, 1933, between the President of the United States and the People's Commissar for Foreign Affairs, "The Recognition of the Government of the Union of Soviet Socialist Republics," *American Journal of International Law* 27: 290 (1933).

9. ENTER THE WORKING CLASS

1. Susanne Miller and Heinrich Potthoff, *A History of German Social Democracy from 1848 to the Present* (New York: St. Martin's Press, 1986), p. 65.
2. Frederick L. Schuman, *Soviet Politics at Home and Abroad* (New York: Alfred Knopf, 1946), p. 172.
3. Gisbert H. Flanz, *Comparative Women's Rights and Political Participation in Europe* (Dobbs Ferry NY: Transnational, 1983), p. 79.
4. John M. Thompson, *Russia, Bolshevism, and the Versailles Peace* (Princeton NJ: Princeton University Press, 1966), p. 13.
5. *Ibid.*, p. 14.
6. Robert Murray, *Red Scare: A Study in National Hysteria, 1919–1920* (New York: McGraw-Hill, 1964), p. 107.
7. *Ibid.*, pp. 57–66.
8. *Ibid.*, pp. 68–81.
9. *Ibid.*, pp. 112–14.
10. *State v. Dingman*, 37 Idaho 253, 219 Pacific 760 (1923).

11. Murray, pp. 125–30, 139–40, 155–58.
12. Ibid., pp. 163–65.
13. Ibid., pp. 205–22.
14. Ibid., p. 216.
15. Ibid., pp. 232–34.
16. Gillian S. Morris, “The Right to Organise in British Law”, in W. E. Butler, B. A. Hepple, and Alan C. Neal, eds., *Comparative Labour Law: Anglo Soviet Perspectives* (Aldershot: Gower Publishing, 1987), p. 123.
17. G. A. Johnston, *The International Labour Organisation: Its Work for Social and Economic Progress* (London: Europa, 1970), p. 6. Johnston served as Assistant Director-General and Treasurer of the I.L.O.
18. David A. Morse, *The Origin and Evolution of the I.L.O. and Its Role in the World Community* (Ithaca NY: New York State School of Industrial and Labor Relations, Cornell University, 1969), p. 4.
19. FRUS Paris, vol. 3, pp. 583–84.
20. Ibid., p. 649.
21. Michael Sayers and Albert E. Kahn, *The Great Conspiracy Against Russia* (New York: Boni & Gaer, 1946), p. 22.
22. Constitution of the International Labor Organization, in Treaty of Peace with Germany (Treaty of Versailles), June 28, 1919, part 13, U.S. Congress, *Statutes at Large* 49: 2712.
23. Louis Henkin, “International Law: Politics, Values and Functions,” *Recueil des cours*. 216: 212 (Hague Academy of International Law, 1989, part 4).
24. Antony Alcock, *History of the International Labor Organization* (New York: Octagon Books, 1971), p. 10.
25. Constitution of the International Labor Organization, preamble.
26. FRUS Paris, vol. 3, pp. 242–44.
27. Ibid., p. 251.
28. Alcock, p. 50.
29. Harold K. Jacobson, *The USSR and the UN’s Economic and Social Activities* (South Bend, IN: University of Notre Dame Press, 1963), p. 40.
30. Walter Galenson, *The International Labor Organization: An American View* (Madison, WI: University of Wisconsin Press, 1981), p. 4.
31. F. I. Kozhevnikov, ed., *Mezhdunarodnoe pravo* [International Law] (Moscow: State Publishing House of Legal Literature, 1957) p. 344.
32. *Legislative History of the National Labor Relations Act* (Washington: U.S. Labor Relations Board, 1935), vol. 1, p. 345.
33. Philippa Strum, *Brandeis: Beyond Progressivism* (Lawrence, KS: University of Kansas, 1993), pp. 33–34.
34. *Congressional Record*, 79: 545 (Jan. 17, 1935, message of President). Social Security Act of 1935 (1935), U.S. Congress, *Statutes at Large* 49: 620; U.S.

- Code*: Title 42, §405. William E. Leuchtenburg, ed., *The New Deal: A Documentary History* (New York: Harper & Row, 1968).
35. Franklin Roosevelt, State of the Union, January 6, 1941, U.S. Congress, *Congressional Record*: 87, 46 (1941).
 36. *Vernon v. Bethel*, 2 Eden 110, 113 (1762).
 37. Franklin Roosevelt, State of the Union, January 11, 1944, in Samuel Rosenman, ed., *The Public Papers & Address of Franklin D. Roosevelt*, vol. 13 (New York: Harper, 1950), pp. 40–42; also in U.S. Congress, *Congressional Record* 90, 57 (1944).
 38. Lagos Lörincz, “Economic, social and cultural rights,” in Institute for Legal and Administrative Sciences, Hungarian Academy of Sciences, *Socialist Concept of Human Rights* (Budapest: Academy of Sciences, 1966), p. 199. Carlo Esposito, *La Costituzione Italiana* (Padua: CEDAM, 1954), pp. 12–15. Maurice F. Neufeld, *Labor Unions and National Politics in Italian Industrial Plants* (Ithaca NY: Institute of International Industrial and Labor Relations, Cornell University, 1954), pp. 26–27. *A Constitution for the Fourth Republic* (Washington DC: Foundation for Foreign Affairs, 1947), pp. 34–35.
 39. Constitution of Italy, 1947, art. 4.
 40. Aldo Bozzi, *Istituzioni di diritto pubblico* (Milan: A. Giuffrè, 1966), p. 405.
 41. Constitution of Italy, 1947, art. 46.
 42. Esposito, pp. 12–15. Neufeld, pp. 26–27.
 43. Gisbert H. Flanz, *Comparative Women’s Rights and Political Participation in Europe* (Dobbs Ferry NY: Transnational, 1983), p. 213.
 44. Constitution of the French Republic, 1946, preamble.
 45. Lörincz, p. 199.
 46. European Social Charter, Oct. 18, 1961, *European Treaty Series*, No. 35, Part II, art. 1 (1).
 47. *U.S. Code Congressional Service*, 79th Cong., 2d sess., 1946, p. 1068.
 48. Employment Act of 1946, U.S. Congress, *Statutes at Large*: 60, 23, *U.S. Code*, vol. Title 15, §1021.
 49. *District 65, Wholesale, Retail, Office and Processing Union v. Richard M. Nixon*, U.S. Dist. Ct., Southern District NY, 341 Fed. Supp. 1193 (1972).
 50. A. Glenn Mower, *International Cooperation for Social Justice: Global and Regional Protection of Economic/Social Rights* (Westport CT: Greenwood Press, 1985), p. 14.
 51. International Covenant on Economic, Social and Cultural Rights, December 16, 1966, art. 6, UNTS. 993: 3.
 52. Convention on the Elimination of All Forms of Discrimination against Women, December 18, 1979, art. 11, UNTS 1249: 13.
 53. European Social Charter, arts. 2–4, 10, 12, 13.
 54. International Covenant on Economic, Social, and Cultural Rights, arts. 7–9.

55. Willem Bongers, *Criminality and Economic Conditions* (Boston: Little, Brown & Co., 1916), p. 340.
56. Mary Ann Glendon, in Mary Ann Glendon, Michael Gordon, and Christopher Osakwe, *Comparative Legal Traditions in a Nutshell* (St. Paul MN: West Pub., 1984), p. 114.
57. Tony Honoré, *The Quest for Security: Employees, Tenants, Wives* (London: Stevens, 1982), pp. 20–31.
58. Dismissal Protection Act, August 25, 1969, art. 1, 1 Bundesgesetzblatt 1317 (1969).
59. Honoré, pp. 20–31.
60. Law of July 13, 1973, amending France, Labor Code, L. 122–14–2, L. 122–14–3. Honoré, p. 23.
61. Bob Fryer, “State, Redundancy and the Law,” in Bob Fryer, et. al., *Law, State and Society* (London: Croon Helm, 1981), pp. 136–59.
62. Industrial Relations Act, 1971 (c. 72), §22. Repealed but reenacted by Trade Union and Labour Relations Act, 1974 (c. 52). See Leonard Rico, “Legislating Against Unfair Dismissal: Implications from British Experience,” *Industrial Relations Law Journal* 8: 547, 551 (1986).
63. Honoré, p. 7, referring to the Employment Protection Act, 1975.
64. Honoré, pp. 9–10.
65. Ibid., pp. 9–10.
66. Craig S. Smith, “Chirac offers labor law compromise; protesters reject it,” *New York Times*, April 1, 2006, p. A3.
67. Gyula Eörsi, “Convergence in Civil Law?” in Imre Szabó and Zoltán Péteri, eds., *A Socialist Approach to Comparative Law* (Leyden: Sijthoff, 1977), p. 45, at p. 87.

10. SOCIAL WELFARE RIGHTS

1. Mauro Cappelletti, James Gordley, and Earl Johnson, *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies* (Dobbs Ferry NY: Oceana, 1975), p. 28.
2. O. F. Robinson, T. D. Fergus, and W. M. Gordon, *An Introduction to European Legal History* (Abingdon, Oxon.: Professional Books, 1985), pp. 492–93.
3. William Harbutt Dawson, *Bismarck and State Socialism: An Exposition of the Social and Economic Legislation of Germany Since 1870* (London: Swan Sonnenschein, 1890; republished, St. Clair Shores, MI: Scholarly Press, 1969), pp. 109–27.
4. Antony Alcock, *History of the International Labor Organization* (New York: Octagon Books, 1971), p. 8. See also, Philippa Watson, *Social Security Law of the European Communities* (London: Mansell, 1980) p. 6.

5. Gerhard A. Ritter, *Social Welfare in Germany and Britain: Origins and Development*, transl. from the German by Kim Traynor (Leamington Spa and New York: Berg, 1986), p. 28.
6. Dawson, p. 113.
7. Ibid., p. 30.
8. Peter Rosenberg, “The Origin and the Development of Compulsory Health Care: the German Experience,” in Donald W. Light and Alexander Schuller, eds., *Political Values and Health Care: The German Experience* (Cambridge MA: MIT Press, 1986), p. 114.
9. Ibid., p. 111.
10. Ritter, p. 32.
11. Ibid., p. 33.
12. E. P. Hennock, *British Social Reform and German Precedents: The Case of Social Insurance 1880–1914* (Oxford: Clarendon Press, 1987), p. 1.
13. Cappelletti, Gordley, and Johnson, pp. 33–58.
14. Ross Cranston, *Legal Foundations of the Welfare State* (London: Weidenfeld & Nicolson, 1985), p. 2.
15. Jerold Auerbach, *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976), p. 55.
16. Ibid., p. 59.
17. Ibid., p. 59.
18. Ibid. p. 60.
19. Robert T. Kudrle and Theodore R. Marmor, “The Development of Welfare States in North America,” in Peter Flora and Arnold J. Heidenheimer, eds., *The Development of Welfare States in Europe and America* (New Brunswick and London: Transaction Books, 1981), p. 84.
20. Cappelletti, Gordley, and Johnson, p. 28.
21. Georges Gurvitch, *The Bill of Social Rights* (New York: International Universities Press, 1946). pp. 22–32.
22. Constitution of Ireland, 1937, art. 45, in Albert P. Blaustein and Gisbert H. Flanz, eds., *Constitutions of the Countries of the World* (Dobbs Ferry NY: Oceana, 1983) p. 8.
23. Ivo D. Duchacek, *Rights and Liberties in the World Today: Constitutional Promise and Reality* (Santa Barbara CA: ABC-Clio, 1973), pp. 119–20.
24. Robinson, Fergus, and Gordon, pp. 492–93.
25. Cappelletti, Gordley, and Johnson, p. 28.
26. *Congressional Record*: 79, 545 (Jan. 17, 1935, message of President). Social Security Act of 1935, U.S. Congress, *Statutes at Large* 49:620, *U.S. Code* Title 42, §405. William E. Leuchtenburg, ed., *The New Deal: A Documentary History* (New York: Harper & Row, 1968).
27. New York Constitution, 1938, art. 17, sec. 1.

28. Franklin Roosevelt, State of the Union, January 11, 1944. Samuel Rosenman, ed., *The Public Papers & Address of Franklin D. Roosevelt*, vol. 13 (New York: Harper, 1950), pp. 40–42.
29. Almont Lindsey, *Socialized Medicine in England and Wales: The National Health Service, 1948–1961* (Chapel Hill NC: University of North Carolina Press, 1962), p. viii.
30. Henry E. Sigerist, M. D., *Socialized Medicine in the Soviet Union* (New York: W.W. Norton, 1937).
31. Constitution of the French Republic, 1946, preamble.
32. *Documents of the United Nations Conference on International Organization, San Francisco, 1945* (London and New York: United Nations Information Organizations, 1945), vol. 8, p. 56.
33. *Ibid.*, p. 57.
34. European Social Charter, art. 13.
35. International Covenant on Economic, Social, and Cultural Rights, December 16, 1966, arts. 11–12, UNTS 993: 3.
36. Convention on the Rights of the Child, November 20, 1989, art. 27, UNTS 1577: 3.
37. Robinson, Fergus, and Gordon, p. 493.

11. THE STATE AND THE ECONOMY

1. Alec Nove, *The Soviet Economic System* (London: G. Allen & Unwin, 1977), p. 375.
2. Harold J. Berman, *Justice in the U.S.S.R: An Interpretation of Soviet Law* (New York: Random House, 1963), pp. 41–46, 50–51.
3. Andrei Vyshinskii, *The Law of the Soviet State* (New York: Macmillan, 1948), pp. 159–60.
4. John N. Hazard, *Law and Social Change in the U.S.S.R.* (London: Stevens, 1953), pp. 35–63.
5. Vyshinskii, pp. 52, 74, 158–59.
6. *Ibid.*, pp. 208–09.
7. D. Magerovskii, “Law, Socialism, and State Capitalism in the Transition Period,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967; originally published 1922), p. 93, at p. 97.
8. Karl Marx, *Critique of the Gotha Program*, in Karl Marx and Friedrich Engels, *Basic Writings on Politics and Philosophy* (Lewis S. Feuer, ed., Garden City NY: Doubleday, 1959) p. 112, 119. I. Podvolotskii, “The Withering Away of Law,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology*,

- (Baltimore: Johns Hopkins University Press, 1967, originally published 1923), p. 114, at p. 116.
9. A. G. Goikhbarg, “The Goals and Methods of the Proletarian Revolution,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967, originally published 1918), p. 57.
 10. John K. Galbraith, *American Capitalism: The Concept of Countervailing Power* (Boston: Houghton Mifflin, 1956), p. 64.
 11. Galbraith, *American Capitalism*, p. 178. John K. Galbraith, *The New Industrial State* (New York: Signet Books, 1967), p. 15.
 12. Arthur M. Schlesinger, Jr., “Source of the New Deal,” in Arthur M. Schlesinger, Jr., and Morton White, eds., *Paths of American Thought* (Boston: Houghton Mifflin, 1963), p. 372, at pp. 389–90.
 13. Arthur M. Schlesinger, Jr., *The Age of Roosevelt: The Politics of Upheaval* (Boston: Houghton Mifflin, 1960), pp. 325–26.
 14. Galbraith, *American Capitalism*, pp. 178–79.
 15. Agricultural Adjustment Act, U.S. Congress, *Statutes at Large* 48:31.
 16. Franklin Roosevelt, State of the Union, January 11, 1944, in Samuel Rosenman, ed., *The Public Papers & Address of Franklin D. Roosevelt* (New York: Harper, 1950), vol. 13, pp. 40–42.
 17. Sumner Welles, *Where Are We Heading* (New York: Harper, 1946), p. 37. See also Berman, p. 411.
 18. Diane B. Kunz, *Butter and Guns: America’s Cold War Economic Diplomacy* (New York: Free Press, 1997), p. 30.
 19. Wolfgang Friedmann and J. F. Garner, eds., *Government Enterprise: A Comparative Study* (New York: Columbia University Press, 1970), p. 305. Pauline Gregg, *The Welfare State: An Economic and Social History of Great Britain from 1945 to the Present Day* (London: George Harrap, 1967), pp. 64–76.
 20. Andrew Shonfield, *Modern Capitalism* (London: Oxford University Press, 1965), pp. 121–50.
 21. Friedmann and Garner, p. 305.
 22. Treaty Establishing the European Economic Community, March 25, 1957, UNTS 298: 11.
 23. W. G. Jensen, *The Common Market* (London: Foulis, 1967), p. 17. Emile Benoit, *Europe at Sixes and Sevens* (New York: Columbia University Press, 1961), pp. 2–3.
 24. Charter of Economic Rights and Duties of States, chap. 2, art. 7, General Assembly Resolution 3281, UN GAOR, 29th sess., Supplement No. 31, p. 50, UN Doc. A/9631 (1975), reprinted in *International Legal Materials* 14: 251 (1975).
 25. Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962) pp. 35–36.

26. Galbraith, *New Industrial State*, p. 317.
27. André Tunc, La possibilité de comparer le contrat dans des systèmes juridiques à structures économiques différentes, *Rabels Zeitschrift für ausländisches und internationales Privatrecht*: 27:478, at 489 (1963).
28. Harold J. Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge MA: Harvard University Press, 2003), pp. 19–20.
29. Gyula Eörsi, “Convergence in Civil Law?” in Imre Szabó & Zoltán Péteri, eds., *A Socialist Approach to Comparative Law* (Leyden: Sijthoff, 1977), p. 45, at p. 94. Emphasis in original.
30. Note respecting the Decision to Permit the Exchange of Goods on a Basis of Reciprocity between the Russian People and Allied and Neutral Countries, Paris, January 16, 1920, in *Documents on British Foreign Policy, 1919–1939*, First Series (London: H. M. Stationery Office, 1948), vol. 2, p. 912.
31. John Quigley, *The Soviet Foreign Trade Monopoly: Institutions and Laws* (Columbus: Ohio State University Press, 1974), p. 51.
32. *Ibid.*, p. 103.
33. Lazar A. Lunts, *Mezhdunarodnoe chastnoe pravo: osobennosti chast’* [International Private Law: Special Part] (Moscow: State Publishing House of Legal Literature, 1963), p. 59.
34. *Playa Larga v. I Congreso del Partido*, Law Reports 1983 House of Lords, vol. 1, p. 258 (Wilberforce, J.).
35. *Ibid.* at 271.
36. *First National City Bank v. Banco para el Comercio Exterior de Cuba*, 462 U.S. 611, 624 (1983).

12. EQUALITY COMES TO THE FAMILY

1. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge MA: Harvard University Press, 1983), pp. 35–36.
2. Mary Ann Glendon, *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (Chicago: University of Chicago, 1989), p. 295.
3. Spain, Constitution, December 29, 1978, sec. 39, para. 1.
4. Glendon, pp. 292–93, 296.
5. Gisbert H. Flanz, *Comparative Women’s Rights and Political Participation in Europe* (Dobbs Ferry NY: Transnational, 1983), p. 76.
6. Ake Lögdberg, “The Reform of Family Law in the Scandinavian Countries,” in A. G. Chloros, ed., *The Reform of Family Law in Europe* (Deventer: Kluwer, 1978), p. 201, at p. 212.
7. Jacques Foyer, “The Reform of Family Law in France,” in Chloros, p. 83.

8. Constitution of the French Republic, 1946, preamble.
9. T. A. Taracouzio, *The Soviet Union and International Law* (New York: Macmillan, 1935), p. 90.
10. Convention on the Nationality of Married Women, arts. 1–2, January 29, 1957, UNTS 309: 65.
11. Convention on the Elimination of All Forms of Discrimination against Women, December 18, 1979, art. 9, UNTS 1249: 13.
12. International Covenant on Civil and Political Rights, December 16, 1966, art. 23, UNTS 999: 171.
13. Human Rights Committee, General comment No. 19: Protection of the family, the right to marriage and equality of the spouses (Art. 23), July 27, 1990.
14. Convention on the Elimination of All Forms of Discrimination against Women, art. 16.
15. *Ibid.*, art. 15.
16. “Chto dal Oktiabr’ zhenshchine zapada” [What October Gave Women in the West], *Ogonek* [Spark], No. 41, October 9, 1972, reprinted in A. M. Kollontai, *Izbrannye stat’i i rechi* [Selected Articles and Speeches] (Moscow: Publishing House of Political Literature, 1972), pp. 361–63.
17. Constitution of the French Republic, 1946, preamble.
18. Ronnie Steinberg Ratner, ed., *Equal Employment Policy for Women: Strategies for Implementation in the United States, Canada, and Western Europe* (Philadelphia: Temple University Press, 1980).
19. Convention on the Elimination of All Forms of Discrimination against Women, art. 7.
20. *Ibid.*, art. 10.
21. *Ibid.*, art. 11.

13. CHILD-BEARING AND RIGHTS OF CHILDREN

1. Colin Francome, *Abortion Freedom: A Worldwide Movement* (London: George Allen, 1984), p. 62.
2. Anne-Marie Rey, “Switzerland,” in Bill Rolston and Anna Eggert, eds., *Abortion in the New Europe: A Comparative Handbook* (Westport CT: Greenwood Press, 1994), p. 253, at p. 254.
3. Francome, p. 63.
4. John Lauritsen and David Thorstad, *The Early Homosexual Rights Movement (1864–1935)* (New York: Times Change Press, 1974), p. 66.
5. Marthe Ruben Wolff, “Introduction to the Russian Film About Abortion,” in World League for Sexual Reform, *Sexual Reform Congress, Proceedings of the Third Congress, London, September 8–14, 1929* (London: Kegan Paul, 1930), p. 238.

6. World League for Sexual Reform, *Sexualnot und Sexualreform: Proceedings of the Fourth Congress, Vienna, September 16–23, 1930* (Vienna: Elbemühl-Verlag, 1931), p. 523.
7. Frederick J. Taussig, *Abortion – Spontaneous and Induced: Medical and Social Aspects* (St. Louis: C. V. Mosby, 1936), pp. 405–20.
8. *Ibid.*, p. 419.
9. *Ibid.*, pp. 413–14.
10. *Ibid.*, p. 420.
11. “Russia in reconstruction,” December 5, 1931, *Lancet* 221:1255 (part 2, 1931).
12. “Should abortion be legalised?” March 19, 1932, *Lancet* 222:627 (part 1, 1932).
13. Taussig, p. 423.
14. Francome, p. 63.
15. Madeleine Simms, “Britain,” in Bill Rolston and Anna Eggert, eds., *Abortion in the New Europe: A Comparative Handbook* (Westport CT: Greenwood Press, 1994), p. 31, at pp. 36–38.
16. *Roe v. Wade*, 410 U.S. 113 (1973).
17. Francome, pp. 1–2.
18. Concluding Observations of the Human Rights Committee: Poland, para. 11, July 29, 1999, UN Doc. CCPR/C/79/Add.110 (1999).
19. Convention on the Rights of the Child, November 20, 1989, art. 18, UNTS: 1577, 3.
20. World League for Sexual Reform, *Sexualnot und Sexualreform: Proceedings of the Fourth Congress, Vienna, September 16–23, 1930* (Vienna: Elbemühl-Verlag, 1931), p. 625.
21. France, Code civil, art. 334, as enacted by Law No. 72–3, January 3, 1972. Jacques Foyer, “The Reform of Family Law in France,” in Chloros, p. 94.
22. Joseph M. Thomson, “English Law,” in Chloros, p. 69.
23. Council of Europe, Convention on the Legal Status of Children Born Out of Wedlock, October 15, 1975, arts. 6, 9, in Maria Rita Saulle (ed.), *The Rights of the Child: International Instruments* (Irvington-on-Hudson: Transnational Publishers, 1995), p. 397.
24. *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972).
25. International Covenant on Civil and Political Rights, December 16, 1966, art. 24, UNTS. 999: 171.
26. Human Rights Committee, General Comment No. 17: Rights of the Child (Art. 24), para. 5, April 7, 1989.
27. Concluding Observations of the Human Rights Committee: Monaco, para. 11, UN Doc. CCPR/CO/72/MCO, August 28, 2001. Concluding

- Observations of the Human Rights Committee: Japan, para. 12, November 19, 1998, UN Doc. CCPR/C/79/Add.102 (1998).
28. Convention on the Rights of the Child, art. 2.
29. Sharon Detrick, *A Commentary on the United Nations Convention on the Rights of the Child* (Hague: Martinus Nijhoff, 1999), pp. 75–77.
30. Concluding Observations of the Committee on the Rights of the Child: Algeria, para. 17, June 18, 1997, UN Doc. CRC/C/15/Add.76.
31. Convention Concerning the Unemployment of Women Before and After Childbirth, November 28, 1919, arts. 3–4, UNTS. 38: 53.
32. Sheila B. Kamerman, “Maternity and Parenting Benefits: An International Overview,” in Edward F. Zigler and Meryl Frank, *The Parental Leave Crisis: Towards a National Policy* (New Haven CT: Yale University Press, 1986), pp. 235–36.
33. Lene Madsen, “Citizen, Worker, Mother: Canadian Women’s Claims to Parental Leave and Childcare,” *Canadian Journal of Family Law* 19: 11 (2002).
34. Convention on the Elimination of All Forms of Discrimination against Women, December 18, 1979, art. 11, UNTS 1249: 13.
35. Susanne A. Stoiber, *Parental Leave and “Woman’s Place”: The Implications and Impact of Three European Approaches to Family Leave Policy* (Washington DC: Women’s Research & Education Institute, 1989), p. 6.
36. U.S. Congress, Family and Medical Leave Act, Public Law 103, February 5, 1993.
37. Council of the European Union, Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICEF, CEEP, and the ETUC, *Official Journal*, L 145: 0004–09 (19 June 1996), reprinted in Hugh Compton and Justin Greenwood, eds., *Social Partnership in the European Union* (New York: Palgrave, 2001), p. 172.

14. RACIAL EQUALITY

1. Mary L. Dudziak, “Desegregation as a Cold War Imperative,” *Stanford Law Review* 41: 61, at 88–89 (1988).
2. Howard Tolley, *The U.N. Commission on Human Rights* (Boulder CO and London: Westview Press, 1987), p. 16.
3. UN Economic and Social Council, 2d year, 4th session, Supplement No. 3, *Report of the Commission on Human Rights*, p. 4, UN Doc. E/259 (1947).
4. Dudziak at 94, citing Memo from Rusk to Hulten, November 4, 1947, National Archives and Records Service Doc. No. 501.B.D. Human Rights/11–447.

5. Carol Anderson, *Eyes Off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955* (Cambridge: Cambridge University Press, 2003), p. 110.
6. *Ibid.*, pp. 93–94.
7. *Ibid.*, p. 108.
8. *Ibid.*, pp. 109–10. Gerald Horne, *Black and Red: W.E.B. DuBois and the Afro-American Response to the Cold War, 1944–1963* (Albany: State University of New York Press, 1986), p. 80.
9. Draft resolution proposed by Mr. A. P. Borisov, December 1, 1947, UN Economic and Social Council, Commission on Human Rights, Subcommittee on Prevention of Discrimination and Protection of Minorities, UN Doc. E/CN.4/Sub.2/24 (1947).
10. UN Economic and Social Council, Commission on Human Rights, Subcommittee on the Prevention of Discrimination and the Protection of Minorities, Summary record of the fourteenth meeting, December 3, 1947, UN Doc. E/CN.4/Sub.2/SR.14 (1947).
11. William O. Douglas, *The Battle for the Minds of Men* (New York: Amalgamated Clothing Workers of America, 1952), pp. 4–5.
12. Dudziak at p. 61.
13. *Brown v. Board of Education*, 347 U.S. 483 (1954), Brief for the United States as *Amicus Curiae*, p. 6.
14. *Ibid.*, p. 7.
15. *Ibid.*, p. 7.
16. *Ibid.*, p. 7.
17. *Ibid.*, p. 7.
18. *Ibid.*, p. 8.
19. *Ibid.*, p. 8.
20. *Ibid.*, pp. 31–32.
21. *Ibid.*, p. 32.
22. “‘Voice’ speaks in 34 languages to flash court ruling to world,” *New York Times*, May 18, 1954, p. A1.
23. Dudziak at 115.
24. Herman Talmadge, *You and Segregation* (Birmingham AL: Vulcan Press, 1955), p. vi.
25. Harold J. Berman, *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge MA: Harvard University Press, 2003), p. 21.
26. Robert E. Rodes, “On the Historical School of Jurisprudence,” *AJIL* 49: 165, at 183 (2004).
27. Res. 1235, UN ESCOR, 42d sess., Supplement No. 1, p. 17, UN Doc. E/4393 (1967).

28. V. M. Chkhikvadze, ed., *Kurs mezhdunarodnogo prava* [Course in International Law] (Moscow: Science Publishing House, 1967), vol. 2, p. 247. Alexander Dallin, *The Soviet Union at the United Nations* (New York: Praeger, 1962), p. 47.

15. CRIME AND PUNISHMENT

1. Jacques Bellon, *Droit Pénal Soviétique et Droit Pénal Occidental: Leur Évolution, Leurs Tendances* (Paris: Éditions de Navarre, 1961), p. 116.
2. Pauline Gregg, *The Welfare State: An Economic and Social History of Great Britain from 1945 to the Present Day* (London: George Harrap, 1967), p. 276.
3. Harold J. Berman, *Justice in the U.S.S.R.: An Interpretation of Soviet Law* (New York: Random House, 1963), p. 301.
4. *Ibid.*, pp. 277–84.
5. *Ibid.*, p. 284 (quoting unpublished work by Llewellyn).
6. Grigorii Batkis, *Die Sexualrevolution in Russland* (transl. Stefanie Theilhaber, Berlin: Syndikalist, 1928).
7. John Lauritsen and David Thorstad, *The Early Homosexual Rights Movement (1864–1935)* (New York: Times Change Press, 1974), p. 66.
8. Gregor Batkis and Leo Gurwitsch, “Einiges material über die sexual reform in der Union der Sozialistischen Sowjetrepubliken,” in World League for Sexual Reform, *Sexual Reform Congress, Proceedings of the Second Congress, Copenhagen, July 1–5, 1928* (Copenhagen: Levin & Munksgaard, 1929), p. 37, at p. 60.
9. Nikolaj Pasche-Oserski, “Sexualstrafrecht in der Sowjetunion,” in World League for Sexual Reform, *Sexual Reform Congress, Proceedings of the Second Congress, Copenhagen, July 1–5, 1928* (Copenhagen: Levin & Munksgaard, 1929), p. 228, at p. 230.
10. P. F. Preobrazhenskii, entry “Gomoseksualizm” [Homosexuality] in O. Iu. Shmidt, ed., *Bol’shaia sovetskaia entsiklopedia* [Large Soviet Encyclopedia] (Moscow: Soviet Encyclopedia Company, 1930), p. 595.
11. The Wolfenden Report: *Report of the Committee on Homosexual Offenses and Prostitution* (New York: Stein & Day, 1963), p. 48.
12. Sexual Offences Act 1967, sec. 1, *Halsbury’s Statutes of England*, 2nd ed., vol. 47 (continuation volume 1967).
13. Model Penal Code, Proposed Official Draft, May 4, 1962, American Law Institute, Philadelphia (1962), p. 146.
14. *Dudgeon v. U.K.*, European Court of Human Rights, ser. A, no. 45 (1981). *Toonen v. Australia*, Human Rights Committee, UN Doc. CCPR/C/50/D/488 (1992).

15. Carl F. Stychin, *Governing Sexuality: The Changing Politics of Citizenship and Law Reform* (Oxford: Hart Publishing, 2003), pp. 115–38.
16. *Lawrence v. Texas*, 539 U.S. 558 (2003).
17. International Agreement for the Suppression of the White Slave Traffic, March 18, 1904, LNTS 1: 83. International Agreement for the Suppression of the White Slave Traffic, May 4, 1910, *British & Foreign State Papers* 103: 244 (1914).
18. John F. Decker, *Prostitution: Regulation and Control* (Littleton CO: F. B. Rothman, 1979), p. 66. Lev Fridland, *S raznykh storon: Prostitutsiia v SSSR* [From Various Sides: Prostitution in the U.S.S.R.] (Leningrad, Red Newspaper, 1931), p. 35. Max Chaleil, *Le Corps prostitué* (Paris: Galilée, 1981), pp. 195, 207–17.
19. Laura Reanda, “Prostitution as a Human Rights Question: Problems and Prospects of United Nations Action,” *Human Rights Quarterly* 13: 202, at 208–09 (1991).
20. Batkis and Gurwitsch, pp. 50–60.
21. Gregory Batkis, “The Problem of Prostitution in U.S.S.R.,” in World League for Sexual Reform, *Sexual Reform Congress, Proceedings of the Third Congress, London, September 8–14, 1929* (London: Kegan Paul, 1930), p. 249, at pp. 250–51.
22. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, December 2, 1949, arts. 1, 2, 6, UNTS 96: 271.
23. Multilateral Treaties Deposited with the Secretary-General, available at www.un.org.
24. Decker, p. 141. Chaleil, p. 419.
25. Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, art. 16. Natalie Kaufman Hevener, *International Law and the Status of Women* (Boulder CO: Westview Press, 1983), p. 78.
26. Alec Nove, *The Soviet Economic System* (London: G. Allen & Unwin, 1977) p. 219. Abram Bergson, *The Economics of Soviet Planning* (New Haven CT and London: Yale University Press, 1964) p. 106.
27. *Yearbook of the United Nations* 1951, p. 541.
28. U.S.S.R. Declaration, August 11, 1954, Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, in United Nations, Multilateral Treaties Deposited with the Secretary-General.
29. “Prostitutsiia” [Prostitution], entry in *Bol’shaia Sovetskaia Entsiklopediia* [Large Soviet Encyclopedia], 2nd ed. (1955) vol. 35, p. 100.
30. The Wolfenden Report: *Report of the Committee on Homosexual Offenses and Prostitution* (New York: Stein & Day, 1963), p. 131.

31. Convention on the Elimination of All Forms of Discrimination against Women, December 18, 1979, art. 6, UNTS 1249: 13.
32. An exception in U.S. jurisdictions is Nevada. See Nev. Rev. Stat., Title 15, §201.354 (1986–89) (“It is unlawful for any person to engage in prostitution . . . except in a house of prostitution . . .”), and *ibid.*, Title 20, §244.345 (providing for the licensing of houses of prostitution by counties).

16. EQUALITY OF NATIONS

1. Arnold McNair, *The Law of Treaties* (Oxford: Clarendon Press, 1971), p. 179.
2. Charles Rousseau, *Principes généraux du droit international public* (Paris: A. Pedone, 1944), vol. 1, p. 303.
3. Paul Johnson, *Modern Times: The World from the Twenties to the Nineties* (New York: HarperCollins, 1991), p. 22.
4. McNair, p. 179. See also Rousseau, p. 303.
5. “The Peace Conference of Paris, 1919,” *AJIL* 13: 159, at 161 (1919).
6. League Covenant, preamble.
7. League Covenant, art. 18.
8. L. Oppenheim, *International Law* (London: Longman’s, 1928), vol. 1, p. 730.
9. V. M. Chkhikvadze, ed., *Kurs mezhdunarodnogo prava* [Course in International Law] (Moscow: Science Publishing House, 1967), vol. 4, p. 153.
10. UN Charter, art. 102.
11. Shih Shun Liu, *Extraterritoriality: Its Rise and Its Decline* (New York: Longmans, Green & Co., 1925), p. 215.
12. *Ibid.*, pp. 219–21.
13. *Ibid.*, p. 197.
14. T. A. Taracouzio, *The Soviet Union and International Law* (New York: Macmillan, 1935), p. 145.
15. Treaty of Friendship (Turkey-RSFSR), March 16, 1921, art. 7, in *British & Foreign State Papers* 118: 990.
16. Treaty of Friendship between Persia and the Russian Soviet Federal Socialist Republic, February 26, 1921, art. 16, LNTS. 9: 409.
17. Treaty of Lausanne, July 24, 1923, art. 28, LNTS 28: 11.
18. Treaty of establishment and sojourn (Turkey-U.S.), October 28, 1931, in force February 15, 1933, U.S. Congress, *Statutes at Large* 47: 2432.
19. Agreement on General Principles for the Settlement of the Questions between the Republic of China and the Union of Soviet Socialist Republics, May 31, 1924, in H. G. W. Woodhead, ed., *China Year Book 1924–5* (London: Tientsin Press, 1925), p. 1194.
20. Decree on Peace, SU RSFSR, no. 1, item 2 (1917).
21. Message from the President, May 29, 1916, *Congressional Record* 53: 8854.

22. Woodrow Wilson, Jan. 22, 1917, U.S. Congress, *Congressional Record* 54: 1742.
23. Chadwick F. Alger, “The Quest for Peace,” Ohio State University, Mershon Center, *Quarterly Report*. 11 (no. 2): 1, at 3 (1986); W. Ofuatey-Kodjoe, *The Principle of Self-Determination in International Law* (New York: Nellen, 1977), p. 70.
24. FRUS Paris, vol. 3, pp. 214–15.
25. FRUS Paris, vol. 3, p. 740.
26. George Kennan, *Soviet-American Relations, 1917–1920, Volume 1, Russia Leaves the War* (New York: Atheneum, 1967), p. 135.
27. FRUS Paris, vol. 3, pp. 749–50, 760–61.
28. League Covenant, art. 22.
29. FRUS Paris, vol. 3, p. 741.
30. League Covenant, art. 22, para. 5.
31. FRUS Paris, vol. 3, p. 1017.
32. FRUS Paris, vol. 3, p. 229.
33. FRUS Paris, vol. 3, p. 750.
34. V. I. Lenin, “Communism and the East: Theses on the National and Colonial Questions,” June 1920, in Robert C. Tucker, ed., *The Lenin Anthology* (New York: Norton, 1975), p. 619, at p. 621.
35. V. I. Lenin, “Communism and the East,” p. 624.
36. Xenia Eudin and Harold Fisher, eds., *Soviet Russia and the West, 1920–1927: A Documentary Survey* (Stanford CA: Stanford University Press, 1957), pp. 320–21.
37. “Anti-Locarno,” *Izvestiia*, December 24, 1925, p. 1. See also Alexander Dallin, *The Soviet Union at the United Nations* (New York: Praeger, 1962), p. 15.

17. THE END OF COLONIES

1. A. Rigo Sureda, *The Evolution of the Right of Self-Determination: A Study of United Nations Practice* (Leiden: Sijthoff, 1973), p. 20.
2. *Documents of the United Nations Conference on International Organization, San Francisco, 1945* (London and New York: United Nations Information Organizations 1945), vol. 8, p. 56.
3. *Ibid.*, vol. 10, p. 441 (Commission II, General Assembly).
4. UN Charter, art. 1, sec. 2.
5. Declaration on the Granting of Independence to Colonial Countries and Peoples, December 14, 1960, General Assembly Resolution 1514 (XV), UN GAOR, 15th sess., Supplement No. 16, p. 66, UN Doc. A/4684 (1961).

6. A. Protopopov, *Sovetskii Soiuz v Organizatsii ob'edinennykh natsii: iz istorii bor'by SSSR za mir i nezavisimost' narodov (1945–1957 gg.)* [The Soviet Union in the United Nations: From the history of the struggle of the USSR for peace and for the independence of peoples (1945–1957)] (Moscow: State Publishing House of Political Literature, 1957), pp. 141–47.
7. UN GAOR, 15th sess., 869th mtg., September 23, 1960, pp. 73–74, UN Doc. A/PV/869 (1960).
8. R. A. Tuzmukhamedov, “Mirnoe sosushchestvovanie i natsional'no-osvoboditel'naia voina” [Peaceful coexistence and war of national liberation], SGP, p. 87, at p. 91 (no. 3, 1963). See also Kazimierz Grzybowski, *Soviet Public International Law: Doctrines and Diplomatic Practice* (Leyden: A. W. Sijthoff, 1970), p. 499.
9. Julius Stone, *Conflict Through Consensus: United Nations Approaches to Aggression* (Baltimore: Johns Hopkins University Press, 1977), p. 67.
10. Louis Henkin, *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979), p. 144. Stephen M. Schwebel, “Wars of Liberation – as Fought in U.N. Organs,” in John Norton Moore, ed., *Law and Civil War in the Modern World* (Baltimore: Johns Hopkins University Press, 1974), p. 446, at p. 453.
11. Declaration on the Granting of Independence to Colonial Countries and Peoples, para. 4.
12. Derek Bowett, “Reprisals Involving Recourse to Armed Force,” AJIL 66: 1, at 36 (1972). Rigo Sureda, p. 338.
13. Security Council Resolution 268, UN SCOR, 24th sess., Resolutions, p. 7, UN Doc. S/INF/24/Rev.1 (1970).
14. Security Council Resolution 273, UN SCOR, Resolutions, p. 9, UN Doc. S/INF/24/Rev.1 (1970).
15. Security Council Resolution 290, UN SCOR, 25th sess., Resolutions, p. 13, UN Doc. S/INF/25 (1971).
16. Security Council Resolution 302, UN SCOR, 26th sess., Resolutions, p. 3, UN Doc. S/INF/27 (1972).
17. Definition of Aggression, General Assembly Resolution 3314, art. 7, December 14, 1974, GAOR, 29th sess., Supplement No. 31, p. 142, UN Doc. A/9631 (1975), reprinted in *International Legal Materials* 13: 710 (1974).
18. Declaration on Principles of International Law Concerning Friendly Relations and Co-operation Among States in Accordance with the Charter of the United Nations, art. 1, GAOR, 25th sess., Supplement No. 28, p. 121, UN Doc. A/8028 (1971), reprinted in *International Legal Materials* 9: 1292 (1970).
19. Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial

- countries and peoples for the effective guarantee and observance of human rights, General Assembly Resolution 2787, art. 1, UN GAOR, 26th sess., Resolutions, p. 82, UN Doc. A/8429 (1971).
20. Declaration on the Establishment of a New International Economic Order, para. 4(k), May 1, 1974, General Assembly Resolution 3201, GAOR, 6th spec. sess., Supplement No. 1, p. 3, UN Doc. A/9559 (1974), reprinted in *International Legal Materials* 13: 715 (1974).
 21. Charter of Economic Rights and Duties of States, General Assembly Resolution 3281, art. 18, December 12, 1974, GAOR, 29th sess., Supplement No. 31, p. 50, UN Doc. A/9631 (1975), reprinted in *International Legal Materials* 14: 251 (1975).
 22. United Nations Convention on the Law of the Sea, December 10, 1982, art. 140, UNTS 1833: 3.

18. THE CRIMINALITY OF WAR

1. General Treaty for Renunciation of War as an Instrument of National Policy, August 27, 1928, LNTS 94: 57.
2. Protocol for the immediate entry into force of the Treaty of Paris of August 27, 1928, regarding Renunciation of War as an Instrument of National Policy, February 9, 1929, LNTS 89: 369.
3. Convention for the Definition of Aggression, July 3, 1933, LNTS 147: 67. Convention for the Definition of Aggression, July 4, 1933, LNTS 148, p. 211.
4. Entry “Zalozhniki” [Hostages], in P. I. Kudriavtsev, ed., *Iuridicheskii slovar’* [Legal Dictionary] (Moscow: State Publishing House of Legal Literature, 1956) vol. 1, p. 334.
5. Paul Fauchille, *Traité de droit international public*, (Paris: Rousseau, 1921), vol. 2, pp. 205–06.
6. George Ginsburgs, *Moscow’s Road to Nuremberg: The Soviet Background to the Trial* (Hague, Martinus Nijhoff, 1996), p. 60.
7. “Zalozhniki” [Hostages], in *Iuridicheskii slovar’*, vol. 1, p. 334.
8. Convention relative to the Protection of Civilian Persons in Time of War, August 12, 1949, art. 34, UNTS 75: 287.
9. Ginsburgs, pp. 60–62.
10. Protocol (I) Additional to the Geneva Conventions of 12 August 1949, June 8, 1977, arts. 43–44 (Geneva: International Committee of the Red Cross, 1977), pp. 30–32. International Committee of the Red Cross, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949* (Geneva: Martinus Nijhoff, 1987), pp. 507–08, 522–25.

11. Deklaratsiia pravitel'stva Sovetskogo Soiuz a i pravitel'stva Pol'skoi respubliki o družbe i vzaimnoi pomoshchi [Declaration of the Government of the Soviet Union and the Government of the Polish Republic on friendship and mutual assistance], in *Vneshniaia politika Sovetskogo Soiuz a v period Otechestvennoi voiny* [The Foreign Policy of the Soviet Union During the Fatherland War] (Moscow: State Publishing House of Political Literature, 1946), vol. 1, pp. 191–92.
12. Protocol, Moscow, November 1, 1943, Annex 10: Declaration of German Atrocities, FRUS 1943, vol. 1, p. 769.
13. The British Prime Minister (Churchill) to President Roosevelt and the Chairman of the Soviet Council of People's Commissars (Stalin), October 12, 1943, FRUS 1943, vol. 1, p. 557.
14. *Ibid.*, p. 768, note 21.
15. Editorial Comment: “Retribution for War Crimes,” *AJIL* 37: 81, at 86 (1943). This language of the Molotov reply also appears in Memorandum to President Roosevelt from the Secretaries of State and War and the Attorney General, January 22, 1945, Annex: Reply by the Soviet Government, in *Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London, 1945* (Washington DC: U.S. Department of State, 1949), p. 17. However, the English rendering of Molotov's Russian text in Jackson's report is imprecise. It says “the special international tribunal,” as if Molotov were referring to an existing tribunal. The Russian text appears in N. N. Polianskii, *Mezhdunarodnoe pravosudie i prestupniki voiny* [International Justice and War Criminals] (Moscow, Publishing House of the Academy of Sciences of the USSR, 1945), p. 69.
16. *Report of Robert H. Jackson*, p. 17. Roosevelt Fireside Chat 23: On the Home Front, October 12, 1942, in Samuel I. Rosenman, ed., *The Public Papers and Addresses of Franklin D. Roosevelt*, (New York: Russell & Russell, 1950), vol. 11, p. 418.
17. The Ambassador in the United Kingdom (Winant) to President Roosevelt, London, August 5, 1942, Enclosure: Proposal for a United Nations Commission on Atrocities, in FRUS 1942, vol. 1, p. 49.
18. The British Embassy to the Department of State, Aide-Mémoire, Washington, September 7, 1942, Enclosure: Memorandum of British Views on Policy to be Adopted with Respect to War Criminals, *ibid.*, p. 53.
19. The Department of State to the British Embassy, Washington, September 18, 1942, *ibid.*, p. 54.
20. Robert Vansittart, *Bones of Contention* (New York: Alfred Knopf, 1945), pp. 57–60.
21. Robert Vansittart, *Lessons of My Life* (New York: Alfred Knopf, 1943), p. 263.
22. *Ibid.*, p. 256.

23. London Agreement (U.S., U.S.S.R., U.K., France), August 8, 1945, U.S. Congress, *Statutes at Large* 59: 1544.
24. International Military Tribunal, “Judgment,” *AJIL* 41: 172 (1947).
25. London Agreement (U.S., U.S.S.R., U.K., France), August 8, 1945, U.S. Congress, *Statutes at Large* 59: 1544.
26. George A. Finch, “The Nuremberg Tribunal and International Law,” *AJIL* 41: 20, at 29 (1947).
27. *Ibid.*
28. A. N. Trainin, *Ugolovnaia otvetstvennost’ gitlerovtsev* [The Criminal Responsibility of the Hitlerites] (Moscow: Law Publishing House of the People’s Commissariat of Justice, 1944), p. 41.
29. Trainin, pp. 153–54.
30. Bradley F. Smith, *The Road to Nuremberg* (New York: Basic Books, 1981), p. 123.
31. Memorandum for the Assistant Secretary of War (from General Kenneth C. Royall), December 14, 1944, in Bradley F. Smith, *The American Road to Nuremberg: The Documentary Record 1944–1945* (Stanford CA: Hoover Institution Press, 1982), p. 76.
32. “Memorandum for the Judge Advocate General: Subject: Is the preparation and launching of the present war a war crime?” December 18, 1944, in Smith, *American Road to Nuremberg*, p. 81.
33. Presidential Memorandum for the Secretary of State, January 3, 1945, in Smith, *American Road to Nuremberg*, p. 92.
34. War Department, Memorandum (by Major Brown and Colonel Bernays), January 4, 1945, in Smith, *American Road to Nuremberg*, p. 96.
35. Memorandum to President Roosevelt from the Secretaries of State and War and the Attorney General, January 22, 1945, in *Report of Robert H. Jackson*, p. 6.
36. Charles Prince, Review of A. N. Trainin, “Ugolovnaya otvetstvennost’ gitlerovtsev” (Criminal Responsibility of the Hitlerites), Moscow, Institute of Law, Academy of Sciences of the U.S.S.R. 1944, *American Bar Association Journal*, July 1945, p. 366, at 368. The list of offenses in Trainin, *Ugolovnaia otvetstvennost’ gitlerovtsev*,” is at p. 40.
37. Sidney S. Alderman, “Background and High Lights of the Nuernberg Trial,” *I.C.C. Practitioners’ Journal* 24(2): 99, at 106 (November 1946). Alderman was on the U.S. staff at the London negotiations.
38. Prince, at 368.
39. Finch at 29.
40. Trainin, p. 157.
41. *Ibid.*, p. 84.
42. *Ibid.*, p. 159.

43. Affirmation of the principles of international law recognized by the Charter of the Nurnberg Tribunal, UN General Assembly, Resolution 95, 1st session, UN Doc. A/64/Add.1, p. 188.
44. Formulation of the principles recognized in the Charter of the Nurnberg Tribunal and in the judgment of the Tribunal, General Assembly Resolution 177, UN GAOR, 2d session, 123d mtg., pp. 1280–82, UN Doc. A/PV.123 (1947).
45. Statute of the International Criminal Court, art. 5, July 17, 1998, UNTS, vol. 2187, p. 3.

19. PROTECTING SOVEREIGNTY

1. Alexander Dallin, *The Soviet Union at the United Nations* (New York: Praeger, 1962), p. 45.
2. Convention on the Prevention and Punishment of the Crime of Genocide, December 9, 1948, UNTS 78: 277.
3. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (advisory opinion), International Court of Justice, *Reports*, p. 15 (1951).
4. Vienna Convention on the Law of Treaties, May 23, 1969, art. 19, UNTS 1155: 331.
5. Security Council Resolution 83, UN SCOR, 5th sess., Resolutions and Decisions, p. 5, UN Doc. S/1511 (1950).
6. UN Charter, arts. 11, 14.
7. General Assembly Resolution 377, UN GAOR, 5th sess., Supp. No. 20, p. 10, UN Doc. A/1775 (1950).
8. General Assembly Resolution 1001, UN GAOR, first emergency special session, Supp. No. 1, p. 3, UN Doc. A/3354 (1956).
9. Polozhenie ob okhrane gosudarstvennykh granits Soiuza SSR [Statute on protecting the state borders of the USSR], SZ SSSR, no. 62, item 625 (1927). See also T. A. Taracouzio, *The Soviet Union and International Law* (New York, Macmillan, 1935), p. 63, and William E. Butler, *The Law of Soviet Territorial Waters: A Case Study of Maritime Legislation and Practice* (New York: Praeger, 1967), p. 30.
10. V. M. Chkhikvadze, ed., *Kurs mezhdunarodnogo prava* [Course in International Law] (Moscow: Science Publishing House, 1967), vol. 3, p. 177.
11. William E. Butler, *The Soviet Union and the Law of the Sea* (Baltimore: Johns Hopkins University Press, 1971), pp. 26–45.
12. Convention on the Territorial Sea and Contiguous Zone, April 29, 1958, UNTS 516: 205.
13. Butler, *The Soviet Union and the Law of the Sea*, p. 45.

14. *Ocean Science News* 10(30): 1 (July 26, 1968).
15. Sayre A. Swarztrauber, *The Three-Mile Limit of Territorial Seas* (Annapolis MD: Naval Institute Press, 1972), p. 246.
16. “U.S. Shifts Position on Territorial Limit,” *Washington Post*, February 19, 1970, p. A16.
17. Swarztrauber, p. 247.
18. UN Convention on the Law of the Sea, December 10, 1982, art. 3, UNTS 1833: 3.
19. Note to Germany, September 13, 1955, *Keesing’s Contemporary Archives* (1955) p. 14426; and Note to Germany, February 4, 1956, *Keesing’s Contemporary Archives* (1956) p. 14723.
20. Summary Records of the 1312th meeting, *International Law Commission Yearbook* 1975, vol. 1, p. 42.
21. John Quigley, “Complicity in International Law: A New Direction in the Law of State Responsibility,” *British Year Book of International Law* 57: 77, at 85 (1986).
22. *Ibid.* And *International Law Commission Yearbook* 1975, vol. 1, p. 42.
23. International Law Commission: Responsibility of States for Internationally Wrongful Acts, art. 16, UN GAOR, 56th sess., Supp. No. 10, UN Doc. A/56/10 (2001).
24. General Assembly Resolution 56/83, UN GAOR, 56th sess., UN Doc. A/RES/56/83 (2002).
25. Secretary General’s report under Article 52 ECHR on the question of secret detention and transport of detainees suspected of terrorist acts, notably by or at the instigation of foreign agencies, February 28, 2006, Council of Europe Doc.SG/Inf (2006), p. 5.
26. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, December 10, 1984, UNTS 1465: 85.

20. MILITARY INTERVENTION

1. UN Charter, art. 2, para. 4.
2. UN Charter, art. 51.
3. UN Charter, art. 27.
4. John Quigley, “Russia’s Practice in the UN Security Council on Use of Force by the United States,” in Robert Sharlet and Ferdinand Feldbrugge, eds., *Public Policy and Law in Russia: In Search of a Unified Legal and Political Space* (Leiden: Martinus Nijhoff, 2005), p. 267.
5. John Moors Cabot, *First Line of Defense: Forty Years’ Experience of a Career Diplomat* (Washington DC: School of Foreign Service, Georgetown University, 1979), p. 90.

6. Andrew Tully, *CIA: The Inside Story* (New York: Morrow, 1962), p. 66. William Colby, *Honorable Men: My Life in the CIA* (New York: Simon & Schuster, 1978), p. 181. Edwin C. Hoyt, *Law and Force in American Foreign Policy* (Lanham MD: University Press of America, 1985), p. 104. David Wise and Thomas B. Ross, *The Invisible Government* (New York: Random House, 1964), p. 166.
7. “Guatemala Says Neighbors and U.S. Plot an Invasion,” *New York Times*, January 30, 1954, p. A1.
8. “Charges of Intervention in Guatemala Denied,” DSB 30: 251 (1954).
9. UN SCOR, 9th sess., 675th mtg., p. 23, 33, UN Doc. S/PV.675 (1954).
10. “Report Prepared in the United States Information Agency,” July 27, 1954, FRUS 1952–1954, vol. 4, p. 1212, at pp. 1212–13.
11. Hoyt, p. 104.
12. David Atlee Phillips, *Night Watch* (New York: Atheneum, 1977), p. 46.
13. Final Report: Foreign and Military Intelligence, U.S. Senate, Select Committee to Study Governmental Operations with Respect to Intelligence Activities, Book I, 94th Congress, 2d Session, April 29, 1976, p. 26. Colby, p. 172.
14. “John F. Kennedy, News Conference,” April 12, 1965, DSB. 44: 661 (1961). John F. Kennedy, “The Lesson of Cuba,” April 20, 1961, DSB 44: 659 (1961).
15. “Mr. Khrushchev to President Kennedy,” April 18, 1961, DSB 44: 662 (1961).
16. “Dominican Coup Deposes Regime; Rebels Are Split,” *New York Times*, 26 April 1965, p. A1.
17. Theodore. Draper, *The Dominican Revolt: A Case Study in American Policy* (New York: Commentary, 1968), pp. 60–61.
18. “U.S. Acts to Meet Threat in Dominican Republic” (White House press release, 28 April 1965), DSB 52: 738 (1965).
19. Letter dated 29 April 1965 from the representative of the United States of America to the President of the Security Council, UN Doc. S/6310, UN SCOR, 20th sess., Supplement April–June 1965, 65, UN Doc. S/Supplements, 1965.
20. Letter dated 1 May 1965 from the representative of the Union of Soviet Socialist Republics to the President of the Security Council, UN Doc. S/6316, UN SCOR, 20th year, Supplement April–June 1965, 70, UN Doc. S/Supplements (1965).
21. “Statement by President Johnson,” May 2, 1965, DSB, vol. 52, pp. 744–47 (1965).
22. UN SCOR, 20th year, 1196th mtg., p. 3, 5, 11, UN Doc. S/PV. 1196, 1965 (Mr. Fedorenko, USSR).

23. Security Council Res. 203, UN SCOR, 20th sess., Resolutions & Decisions, p. 10, UN Doc. S/INF/20/Rev.1 (1967).
24. Abraham F. Lowenthal, *The Dominican Intervention* (Cambridge MA: Harvard University Press, 1972), p. 103. Tad Szulc, *Dominican Diary* (New York: Delcorte Press, 1965), p. 42. Tad Szulc, “Dominican revolt fails after a day of savage battle,” *New York Times*, April 28, 1965, p. A1.
25. “Secretary Rusk’s news conference of May 26,” DSB 52: 938 (1965).
26. V. M. Chkhikvadze, ed., *Kurs mezhdunarodnogo prava* [Course in International Law] (Moscow: Science Publishing House, 1967), vol. 4 (1968) pp. 175–76.
27. Vienna Convention on the Law of Treaties, May 23, 1969, art. 52, UNTS 1155: 331.

21. TRIUMPH OF CAPITALIST LAW?

1. Francis Fukuyama, “The End of History?” *The National Interest* (Summer 1989), p. 3.
2. “Transcript of President’s Address to Joint Session of Congress,” *New York Times*, September 12, 1990, p. A20.
3. Joseph Kahn, “Sharp debate erupts in China over socialism and capitalism,” *New York Times*, March 12, 2006, p. A1.
4. John K. Galbraith, *The New Industrial State* (New York: Signet Books, 1967), pp. 399–401.
5. Noam Chomsky, “The Dawn, So Far, Is in the East,” *Nation* (Jan. 29, 1990), p. 130, at p. 133.
6. Roscoe Pound, *Outlines of Lectures on Jurisprudence* (Cambridge MA: Harvard University Press, 1943), pp. 43–47. See also Harold J. Berman, *Justice in the U.S.S.R.: An Interpretation of Soviet Law* (New York: Random House, 1963), pp. 421–22.

22. THE MOORINGS OF WESTERN LAW

1. J. H. Merryman, *The Civil Law Tradition* (Stanford CA: Stanford University, 1985), pp. 94–95.
2. Mary Ann Glendon, in Mary Ann Glendon, Michael Gordon, and Christopher Osakwe, *Comparative Legal Traditions in a Nutshell* (St. Paul MN: West Pub., 1984), p. 115.
3. A. Ehrenzweig, “Book Review of John Hazard, Communists and Their Law,” *California Law Review* 58: 1007 (1970).

4. F. H. Lawson, “Book Review of John Hazard, *Law and Social Change in the U.S.S.R. and Boris Konstantinovsky, Soviet Law in Action*,” *University of Chicago Law Review* 21: 782 (1954).
5. Glendon, pp. 114, 116.
6. *Ibid.*, p. 117.
7. Keith Hawkins, *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency* (Oxford: Oxford University Press, 2002), p. 17.
8. F. A. Hayek, *Law, Legislation and Liberty, A New Statement of the Liberal Principles of Justice and Political Economy. Volume 2: The Mirage of Social Justice* (Chicago: University of Chicago Press, 1976), p. 83.
9. *Ibid.*, p. 85.
10. André Tunc, La possibilité de comparer le contrat dans des systèmes juridiques à structures économiques différentes, *Rabels Zeitschrift für ausländisches und internationales Privatrecht*, 27, 478, at 493 (1963).
11. Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge MA: Harvard University Press, 1983), pp. 36–37.
12. Convention on the Law of the Sea, December 10, 1982, arts. 133–191, UNTS 1833: 3.
13. Neil MacCormick, *Legal Right and Social Democracy: Essays in Legal and Political Philosophy* (Oxford: Clarendon Press, 1982), p. 12. L. Uspenskii, “Economic Rights under Socialism,” in Michael Jaworskyj, ed., *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins University Press, 1967, originally published 1925), p. 227.
14. Roscoe Pound, *Social Control Through Law* (New Haven CT: Yale University Press, 1942).
15. Berman, p. 37.

23. THE IMPACT OF CHANGE

1. Frequently quoted, inaccurately, as “I have seen the future, and it works.”

Bibliography

- Albertson, Ralph. *Fighting without a War: An Account of Military Intervention in North Russia* (New York: Harcourt, Brace & Howe, 1920).
- Alcock, Antony. *History of the International Labor Organization* (New York: Octagon Books, 1971).
- Anderson, Carol. *Eyes Off the Prize: The United Nations and the African American Struggle for Human Rights, 1944–1955* (Cambridge: Cambridge University Press, 2003).
- Atkinson, Dorothy, Alexander Dallin, and Gail Lapidus, eds. *Women in Russia* (Stanford CA: Stanford University Press, 1977).
- Auerbach, Jerold. *Unequal Justice: Lawyers and Social Change in Modern America* (New York: Oxford University Press, 1976).
- Batkis, G. A. *Voprosy sanitarnoi demograficheskoi statistiki: izbrannie proizvedeniia* [Issues in Sanitary Demographic Statistics: Selected Works] (Moscow: Statistics Publisher, 1964).
- Batkis, Grigorii. *Die Sexualrevolution in Russland* (transl. Stefanie Theilhaber, Berlin: Syndikalist, 1928), p. 22. Translation of Grigorii Batkis, *Seksual'naia revoliutsiia v Rossii* [Sexual Revolution in Russia] (Moscow, 1923).
- Bebel, August (transl. Daniel De Leon). *Woman under Socialism* (New York: Schocken Books, 1971).
- Beliaev, N. A., and M. D. Shargorodskii, eds. *Kurs sovetskogo ugolovnogo prava (chast' obshchaia)* [Course in Soviet Criminal Law (General Part)] (Leningrad: Leningrad University Press, 1970).
- Bellon, Jacques. *Droit Pénal Soviétique et Droit Pénal Occidental: Leur Évolution, Leurs Tendances* (Paris: Éditions de Navarre, 1961).
- Belyakova, A. M. *Soviet Legislation on Women's Rights: Collection of Normative Acts* (Moscow: Progress, 1978).

Bibliography

- Benoit, Emile. *Europe at Sixes and Sevens* (New York: Columbia University Press, 1961).
- Bergson, Abram. *The Economics of Soviet Planning* (New Haven CT and London: Yale University Press, 1964).
- Berman, Harold J. *Justice in the U.S.S.R.: An Interpretation of Soviet Law* (New York: Random House, 1963).
- Berman, Harold J. *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge MA: Harvard University Press, 1983).
- Berman, Harold J. *Law and Revolution, II: The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge MA: Harvard University Press, 2003).
- Berman, Harold J. *Soviet Criminal Law and Procedure: The RSFSR Codes* (Cambridge MA: Harvard University, 1972).
- Bernstein, Laurie Annabelle. "Sonia's Daughters: Prostitution and Society in Russia" (Ph.D. Diss., University of California, Berkeley, 1987).
- Blekher, Feiga. *The Soviet Woman in the Family and in Society: A Sociological Study* (New York: J. Wiley, 1979).
- Bonger, Willem. *Criminality and Economic Conditions* (Boston: Little, Brown & Co., 1916).
- Bradley, J. F. N. *Civil War in Russia 1917–1920* (New York: St. Martin's Press, 1975).
- Brinton, Crane. *French Revolutionary Legislation on Illegitimacy 1789–1804* (Cambridge MA: Harvard University Press, 1936).
- Bronner, Vol'f. *La Lutte Contre la Prostitution en URSS* (Moscow: Society for Cultural Relations between the U.S.S.R. and Foreign Countries, 1936).
- Buenker, John D., John C. Burnham, and Robert M. Crunden. *Progressivism* (Cambridge MA: Schenkman Publishing, 1977).
- Bozzi, Aldo. *Istituzioni di diritto pubblico* (Milan: A. Giuffrè, 1966).
- Bukharin, Nikolai, and Evgenii Preobrazhenskii. *The ABC of Communism: A Popular Explanation of the Program of the Communist Party of Russia* (Ann Arbor: University of Michigan Press, 1966).
- Butler, W. E., B. A. Hepple, and Alan C. Neal, eds., *Comparative Labour Law: Anglo Soviet Perspectives* (Aldershot: Gower Publishing, 1987).
- Butler, William E. *The Law of Soviet Territorial Waters: A Case Study of Maritime Legislation and Practice* (New York: Praeger, 1967).
- Butler, William E. *The Soviet Union and the Law of the Sea* (Baltimore: Johns Hopkins University Press, 1971).
- Cabot, John Moors. *First Line of Defense: Forty Years' Experience of a Career Diplomat* (Washington DC: School of Foreign Service, Georgetown University, 1979).
- Callcott, Mary. *Russian Justice* (New York: Macmillan, 1935).

Bibliography

- Cappelletti, Mauro, James Gordley, and Earl Johnson. *Toward Equal Justice: A Comparative Study of Legal Aid in Modern Societies* (Dobbs Ferry NY: Oceana, 1975).
- Carr, E. H. *The Bolshevik Revolution 1917–1923* (Baltimore: Penguin Books, 1951).
- Chaleil, Max. *Le Corps prostitué* (Paris: Galilée, 1981).
- Chel'tsov, M. A., ed. *Ugolovnyi protsess* [Criminal Procedure] (Moscow: Legal Literature, 1969).
- Chkhikvadze, V. M., ed. *Kurs mezhdunarodnogo prava* [Course in International Law] (Moscow: Science Publishing House, 1967).
- Chloros, G., ed. *The Reform of Family Law in Europe* (The Equality of the Spouses – Divorce – Illegitimate children) (Deventer: Kluwer, 1978).
- Cohn, Herman, compiler. *The Foreign Laws of Marriage and Divorce: Part I: The Countries of the European Continent* (Tel Aviv: Palestine Publishing Company, 1937).
- Colby, William. *Honorable Men: My Life in the CIA* (New York: Simon & Schuster, 1978).
- Cranston, Ross. *Legal Foundations of the Welfare State* (London: Weidenfeld & Nicolson, 1985).
- Cudahy, John. *Archangel: The American War with Russia* (Chicago: A.C. McClurg & Co., 1924).
- Dallin, Alexander. *The Soviet Union at the United Nations* (New York, Praeger, 1962).
- Dawson, William Harbutt. *Bismarck and State Socialism: An Exposition of the Social and Economic Legislation of Germany Since 1870* (London: Swan Sonnenschein, 1890; republished, St. Clair Shores, MI: Scholarly Press, 1969).
- Decker, John F. *Prostitution: Regulation and Control* (Littleton CO: F. B. Rothman, 1979).
- Degras, Jane, ed. *Soviet Documents on Foreign Policy* (London: Oxford University Press, 1951).
- Despatys, Pierre. *Magistrats et criminels, 1795–1844* (Paris: Plon-Nourrit & Co., 1913).
- Detrick, Sharon. *A Commentary on the United Nations Convention on the Rights of the Child* (The Hague: Martinus Nijhoff, 1999).
- Dicey, Arthur Venn. *Law and Public Opinion in England During the Nineteenth Century* (London: Macmillan, 1962).
- Dmitriev, F. *Istoriia sudebnykh instantsii i grazhdanskago appelliatsionnago sudoproizvodstva ot Sudebnika do Uchrezhdeniia o guberniakh* [History of the Court System and of Civil and Appellate Procedure from the Court Book to the Statute on Provinces] (Moscow: University Typesetter, 1859).

Bibliography

- Dmytryshyn, Basil. *USSR: A Concise History* (New York: Scribner, 1971).
- Dobb, Maurice. *Soviet Economic Development Since 1917* (New York: International Publishers, 1966).
- Douglas, William O. *The Battle for the Minds of Men* (New York: Amalgamated Clothing Workers of America, 1952).
- Draper, Theodore. *The Dominican Revolt: A Case Study in American Policy* (New York: Commentary, 1968).
- Duchachek, Ivo D. *Rights and Liberties in the World Today: Constitutional Promise and Reality* (Santa Barbara CA: ABC-Clio, 1973).
- Engels, Frederick. *The Origin of the Family, Private Property and the State In the Light of the Researches of Lewis H. Morgan* (New York: International Publishers, 1972).
- Engels, Friedrich. *The Condition of the Working-Class in England in 1844* (transl. F. K. Wischniewetzky, London: S. Sonnenschein & Co., 1892).
- Esposito, Carlo. *La Costituzione Italiana* (Padua: CEDAM, 1954).
- Fauchille, Paul. *Traité de droit international public* (Paris: Rousseau, 1921).
- Field, Alice Withrow. *Protection of Women and Children in Soviet Russia* (New York: E. P. Dutton, 1932).
- Field, Mark. *Soviet Socialized Medicine* (New York: Free Press, 1967).
- Fischer, Louis. *The Soviets in World Affairs: A History of the Relations between the Soviet Union and the Rest of the World 1917–1929* (Princeton NJ: Princeton University Press, 1951).
- Flanz, Gisbert H. *Comparative Women's Rights and Political Participation in Europe*, (Dobbs Ferry NY: Transnational, 1983).
- Flexner, Abraham. *Prostitution in Europe* (New York: American Social Hygiene Association, 1914).
- Flora, Peter, and Arnold J. Heidenheimer, eds. *The Development of Welfare States in Europe and America* (New Brunswick and London: Transaction Books, 1981).
- Förster, Stig, Wolfgang J. Mommsen, and Ronald Robinson, eds. *Bismarck, Europe, and Africa: The Berlin Africa Conference 1884–1885 and the Onset of Partition* (Oxford: Oxford University Press, 1988).
- Francome, Colin. *Abortion Freedom: A Worldwide Movement* (London: George Allen, 1984).
- Fridland, Lev. *S raznykh storon: Prostitutsiia v SSSR* [From Various Sides: Prostitution in the U.S.S.R.] (Leningrad: Red Newspaper, 1931).
- Friedman, Milton. *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962).
- Friedmann, Wolfgang, and J. F. Garner, eds. *Government Enterprise: A Comparative Study* (New York: Columbia University Press, 1970).

Bibliography

- Galbraith, John K. *American Capitalism: The Concept of Countervailing Power* (Boston: Houghton Mifflin, 1956).
- Galbraith, John K. *The New Industrial State* (New York: Signet Books, 1967).
- Galenson, Walter. *The International Labor Organization: An American View* (Madison WI: University of Wisconsin Press, 1981).
- Gal'perin, S. E. *Prostitutsiia v proshlom i nastoiashchem* [Prostitution in the past and present] (Moscow: Protection of Motherhood and Infants Press, 1928).
- Ginsburgs, George. *Moscow's Road to Nuremberg: The Soviet Background to the Trial* (The Hague: Martinus Nijhoff, 1996).
- Glendon, Mary Ann. *State, Law and Family: Family Law in Transition in the United States and Western Europe* (Amsterdam: North-Holland Publishers, 1977).
- Glendon, Mary Ann. *The Transformation of Family Law: State, Law, and Family in the United States and Western Europe* (Chicago: University of Chicago Press, 1989).
- Glendon, Mary Ann, Michael Gordon, and Christopher Osakwe. *Comparative Legal Traditions in a Nutshell* (St. Paul MN: West Pub., 1984).
- Goldman, Wendy Z. *Women, the State and Revolution: Soviet Family Policy and Social Life, 1917–1936* (Cambridge and New York: Cambridge University Press, 1993).
- Graupner, Helmut, and Phillip Tahmindjis, eds., *Sexuality and Human Rights: A Global Overview* (New York: Haworth Press, 2005).
- Gregg, Pauline. *The Welfare State: An Economic and Social History of Great Britain from 1945 to the Present Day* (London: George Harrap, 1967).
- Grzybowski, Kazimierz. *Soviet Public International Law: Doctrines and Diplomatic Practice* (Leyden: A. W. Sijthoff, 1970).
- Gurvitch, Georges. *The Bill of Social Rights* (New York: International Universities Press, 1946).
- Halle, Fannina W. *Woman in Soviet Russia* (New York: Viking, 1933).
- Harsin, Jill. *Policing Prostitution in Nineteenth-Century Paris* (Princeton NJ: Princeton University Press, 1985).
- Hawkins, Keith. *Law as Last Resort: Prosecution Decision-Making in a Regulatory Agency* (Oxford: Oxford University Press, 2002).
- Hayek, F. A. *Law, Legislation and Liberty, A New Statement of the Liberal Principles of Justice and Political Economy* (Chicago: University of Chicago Press, 1976).
- Hazard, John N. *Law and Social Change in the U.S.S.R.* (London: Stevens, 1953).
- Hazard, John N. *Soviet Housing Law* (New Haven CT: Yale University Press, 1939).
- Healey, Dan. *Homosexual Desire in Revolutionary Russia: The Regulation of Sexual and Gender Dissent* (Chicago: University of Chicago Press, 2001).

Bibliography

- Hekma, G., H. Oosterhuis, and J. Steakley, eds. *Gay Men and the Sexual History of the Political Left* (New York: Haworth Press, 1995).
- Henkin, Louis. *How Nations Behave: Law and Foreign Policy* (New York: Columbia University Press, 1979).
- Hennock, E. P. *British Social Reform and German Precedents: The Case of Social Insurance 1880–1914* (Oxford: Clarendon Press, 1987).
- Hevener, Natalie Kaufman. *International Law and the Status of Women* (Boulder CO: Westview Press, 1983).
- Hobson, John A. *The Evolution of Modern Capitalism* (London: Allen & Unwin, 1926).
- Holt, Alix, transl. and ed. *Selected Writings of Alexandra Kollontai* (Westport CT: L. Hill, 1977).
- Honoré, Tony. *The Quest for Security: Employees, Tenants, Wives* (London: Stevens, 1982).
- Horne, Gerald. *Black and Red: W.E.B. DuBois and the Afro-American Response to the Cold War, 1944–1963* (Albany: State University of New York Press, 1986).
- Hoyt, Edwin C. *Law and Force in American Foreign Policy* (Lanham MD: University Press of America, 1985).
- Institute for Legal and Administrative Sciences, Hungarian Academy of Sciences, *Socialist Concept of Human Rights* (Budapest: Academy of Sciences, 1966).
- Jacobson, Harold K. *The USSR and the UN's Economic and Social Activities* (South Bend IN: University of Notre Dame Press, 1963).
- Jaworskyj, Michael, ed. *Soviet Political Thought: An Anthology* (Baltimore: Johns Hopkins Press, 1967).
- Jensen, W. G. *The Common Market* (London: Foulis, 1967).
- Johnson, Paul. *Modern Times: The World from the Twenties to the Nineties* (New York: HarperCollins, 1991).
- Johnston, G. A. *The International Labour Organisation: Its Work for Social and Economic Progress* (London: Europa, 1970).
- Kalinychev, F. I. *Sovetskoe zakonodatel'stvo v period stroitel'stva kommunizma* [Soviet Legislation in the Period of the Construction of Communism] (Moscow: Thought, 1966).
- Kareva, M. P., ed. *Teoriia gosudarstva i prava* [Theory of State and Law] (Moscow: State Publishing House of Legal Literature, 1949).
- Kennan, George. *Soviet-American Relations, 1917–1920* (New York: Atheneum, 1967).
- Kollontai, A. M. *Izbrannye stat'i i rechi* [Selected Articles and Speeches] (Moscow: Publishing House of Political Literature, 1972).

Bibliography

- Kollontai, Alexandra. *Sexual Relations and the Class Struggle, Love and the New Morality* (Montpelier VT: Falling Wall Press, 1972).
- Koni, A. F. *Ottsy i deti sudebnoi reformy* [Fathers and Children of the Court Reform] (Moscow: I. D. Sytin, 1914).
- Korovin, E. A., ed. *Mezhdunarodnoe pravo* [International Law] (Moscow: State Publishing House of Legal Literature, 1951).
- Kozhevnikov, F. I., ed. *Mezhdunarodnoe pravo* [International Law] (Moscow: State Publishing House of Legal Literature, 1957).
- Kucherov, Samuel. *Courts, Lawyers and Trials under the Last Three Tsars* (New York: Praeger, 1953).
- Kucherov, Samuel. *The Organs of Soviet Administration of Justice: Their History and Operation* (Leiden: E. J. Brill, 1970).
- Kul'kov, I., ed. *Lenin o mezhdunarodnoi politike i mezhdunarodnom prave* [Lenin on international politics and international law] (Moscow: Publishing House of the Institute of International Relations, 1958).
- Kunz, Diane B. *Butter and Guns: America's Cold War Economic Diplomacy* (New York: Free Press, 1997).
- Lapidus, Gail Warshofsky. *Women in Soviet Society: Equality, Development, and Social Change* (Berkeley: University of California Press, 1978).
- Laski, Harold J. *The Strategy of Freedom: An Open Letter to American Youth* (New York: Harper, 1941).
- Lauritsen, John, and David Thorstad. *The Early Homosexual Rights Movement (1864-1935)* (New York: Times Change Press, 1974).
- Legislative History of the National Labor Relations Act* (Washington DC: U.S. Labor Relations Board, 1935).
- Leuchtenburg, William E., ed. *The New Deal: A Documentary History* (New York: Harper & Row, 1968).
- Light, Donald W., and Alexander Schuller, eds. *Political Values and Health Care: The German Experience* (Cambridge MA: MIT Press, 1986).
- Lindsey, Almont. *Socialized Medicine in England and Wales: The National Health Service, 1948-1961* (Chapel Hill: University of North Carolina Press, 1962).
- Liu, Shih Shun. *Extraterritoriality: Its Rise and Its Decline* (New York: Longmans, Green & Co., 1925).
- Lowenthal, Abraham F. *The Dominican Intervention* (Cambridge, MA: Harvard University Press, 1972), p. 103.
- Lunts, Lazar A. *Mezhdunarodnoe chastnoe pravo: osobennaia chast'* [International Private Law: Special Part] (Moscow: State Publishing House of Legal Literature, 1963).

Bibliography

- MacCormick, Neil. *Legal Right and Social Democracy: Essays in Legal and Political Philosophy* (Oxford: Clarendon Press, 1982).
- Marx, Karl. *Capital* (New York: Modern Library, 1906).
- Marx, Karl, and Friedrich Engels. *Basic Writings on Politics & Philosophy*, Lewis Feuer, ed. (Garden City NY: Doubleday, 1959).
- Marx, Karl, and Friedrich Engels. *The Communist Manifesto* (New York: Washington Square Press, 1971).
- McNair, Arnold. *The Law of Treaties* (Oxford: Clarendon Press, 1971).
- Merryman, J. H. *The Civil Law Tradition* (Stanford CA: Stanford University, 1985).
- Mendel, Arthur P., ed. *Essential Works of Marxism* (New York: Bantam, 1977).
- Menger, Anton. *Das bürgerliche Recht und die besitzlosen Volksklassen* (Tübingen, H. Laupp, 1890).
- Miller, Susanne, and Heinrich Potthoff. *A History of German Social Democracy from 1848 to the Present* (New York: St. Martin's Press, 1986).
- Misgeld, Klaus, Karl Molin, and Klas Armark, eds. *Creating Social Democracy: A Century of the Social Democratic Labor Party in Sweden* (University Park PA: Pennsylvania State University Press, 1992).
- Moore, John Norton, ed. *Law and Civil War in the Modern World* (Baltimore: Johns Hopkins University Press, 1974).
- Morse, David A. *The Origin and Evolution of the I.L.O. and Its Role in the World Community* (Ithaca NY: New York State School of Industrial and Labor Relations, Cornell University, 1969).
- Moulis, E., and E. Bergonier. *La Guerre entre Les Alliés et la Russie (1918–1920), Documents réunis* (Paris: Librairie Générale de droit et de jurisprudence, 1937).
- Mower, A. Glenn. *International Cooperation for Social Justice: Global and Regional Protection of Economic/Social Rights* (Westport CT: Greenwood Press, 1985).
- Murray, Robert. *Red Scare: A Study in National Hysteria, 1919–1920* (New York: McGraw-Hill, 1964).
- Neufeld, Maurice F. *Labor Unions and National Politics in Italian Industrial Plants* (Ithaca NY: Institute of International Industrial and Labor Relations, Cornell University, 1954).
- Nove, Alec. *The Soviet Economic System* (London: G. Allen & Unwin, 1977).
- Ofoatey-Kodjoe, W. *The Principle of Self-Determination in International Law* (New York: Nellen, 1977).
- Oppenheim, L. *International Law* (London: Longman's, 1928).
- Parry, Edward Abbott. *The Law and the Poor* (London: Smith, Elder, 1914).

Bibliography

- Pashukanis, Evgenii. *Obshchaia teoriia prava i marksizm* [The General Theory of Law and Marxism] (Moscow: Publishing House of the Communist Academy, 1928).
- Phillips, David Atlee. *Night Watch* (New York: Atheneum, 1977).
- Planiol, M., and G. Ripert. *Traité pratique de droit civil français* (Paris: Librairie Générale de Droit & de Jurisprudence, 1928).
- Pobedonostsev, K. *Kurs grazhdanskago prava* [Course in Civil Law] (Saint Petersburg: Synod Tipography, 1896).
- Polianskii, N. N. *Mezhdunarodnoe pravosudie i prestupniki voiny* [International Justice and War Criminals] (Moscow, Publishing House of the Academy of Sciences of the USSR, 1945).
- Pound, Roscoe. *Jurisprudence* (St. Paul MN: West, 1959).
- Pound, Roscoe. *Outlines of Lectures on Jurisprudence* (Cambridge MA: Harvard University Press, 1943).
- Pound, Roscoe. *Social Control Through Law* (New Haven CT: Yale University Press, 1942).
- Protopopov, A. *Sovetskii Soiuz v Organizatsii ob'edinennykh natsii: iz istorii bor'by SSSR za mir i nezavisimost' narodov (1945–1957 gg.)* [The Soviet Union in the United Nations: from the history of the struggle of the USSR for peace and for the independence of peoples (1945–1957)] (Moscow: State Publishing House of Political Literature, 1957).
- Quataert, J. *Reluctant Feminists in German Social Democracy 1885–1917* (Princeton NJ: Princeton University Press, 1979).
- Quigley, John. *The Soviet Foreign Trade Monopoly: Institutions and Laws* (Columbus: Ohio State University Press, 1974).
- Ratner, Ronnie Steinberg, ed. *Equal Employment Policy for Women: Strategies for Implementation in the United States, Canada, and Western Europe* (Philadelphia: Temple University Press, 1980).
- Rauch, Georg von. *A History of Soviet Russia* (New York: Praeger, 1959).
- Renner, Karl. *Institutions of Private Law and Their Social Function* (London: Routledge, 1949).
- Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials, London, 1945* (Washington DC: U.S. Department of State, 1949).
- Rheinstein, Max. *Marriage Stability, Divorce, and the Law* (Chicago: University of Chicago Press, 1971).
- Rigo Sureda, A. *The Evolution of the Right of Self-Determination: A Study of United Nations Practice* (Leiden: Sijthoff, 1973).

Bibliography

- Rimlinger, G. *Welfare Policy and Industrialization in Europe, America, and Russia* (New York: John Wiley Sons, 1971).
- Ritter, Gerhard A. *Social Welfare in Germany and Britain: Origins and Development*, trans. Kim Traynor (Leamington Spa & New York: Berg, 1986).
- Robinson, O. F., T. D. Fergus, and W. M. Gordon. *An Introduction to European Legal History* (Abingdon, Oxon.: Professional Books, 1985).
- Rolston, Bill, and Anna Eggert, eds. *Abortion in the New Europe: A Comparative Handbook* (Westport CT: Greenwood Press, 1994).
- Rusche, Georg, and Otto Kirchheimer. *Punishment and Social Structure* (New York: Columbia University Press, 1939).
- Rosenman, Samuel, ed. *The Public Papers & Address of Franklin D. Roosevelt* (New York: Harper, 1950).
- Rousseau, Charles. *Principes généraux du droit international public*, (Paris: A. Pedone, 1944).
- Sayers, Michael, and Albert E. Kahn. *The Great Conspiracy Against Russia* (New York: Boni & Gaer, 1946).
- Schlesinger, Arthur M., Jr. *The Age of Roosevelt: The Politics of Upheaval* (Boston: Houghton Mifflin, 1960).
- Schlesinger, Arthur M., Jr. and Morton White, eds. *Paths of American Thought* (Boston: Houghton Mifflin, 1963).
- Schlesinger, Rudolf, ed. *Changing Attitudes in Soviet Russia: The Family in the U.S.S.R.: Documents and Readings* (London: Routledge & Paul, 1949).
- Schuman, Frederick L. *Soviet Politics at Home and Abroad* (New York: Alfred Knopf, 1946).
- Schwartz, Harry. *Russia's Soviet Economy* (New York: Prentice-Hall, 1954).
- Selivanova, Nina Nikolaevna. *Russia's Women* (New York: E.P. Dutton, 1923).
- Sharlet, Robert, and Ferdinand Feldbrugge, eds. *Public Policy and Law in Russia: In Search of a Unified Legal and Political Space* (Leiden: Martinus Nijhoff, 2005).
- Shonfield, Andrew. *Modern Capitalism* (London: Oxford University Press, 1965).
- Sigerist, Henry E. *Socialized Medicine in the Soviet Union* (New York: W.W. Norton, 1937).
- Sinaiskii, V. I. *Lichnoe i imushchestvennoe polozenie zamuzhnei zhenshchiny v grazhdanskom prave (s prilozheniem deistvuiushchikh russkikh zakonov, senatskoi praktiki i ukazatel'ia russkoi literatury)* [The personal and property position of a married woman in civil law (with an annex on Russian laws in force, case law of the Senate and an index of Russian literature)] (Iuriev and Dorpat: C. Mattiesen Publisher, 1910).
- Smith, Bradley F. *The American Road to Nuremberg: The Documentary Record 1944–1945* (Stanford CA: Hoover Institution Press, 1982).

Bibliography

- Smith, Bradley F. *The Road to Nuremberg* (New York: Basic Books, 1981).
- Smith, Reginald Heber. *Justice and the Poor*, 2nd ed. (New York: Scriber, 1921).
- Sousa, Nasim. *The Capitulatory Regime of Turkey: Its History, Origin, and Nature* (Baltimore: Johns Hopkins University Press, 1933).
- Stites, Richard. *The Women's Liberation Movement in Russia: Feminism, Nihilism, and Bolshevism 1860–1930* (Princeton NJ: Princeton University Press, 1978).
- Stoiber, Susanne A. *Parental Leave and "Woman's Place": The Implications and Impact of Three European Approaches to Family Leave Policy* (Washington DC: Women's Research & Education Institute, 1989).
- Stone, Julius. *Conflict Through Consensus: United Nations Approaches to Aggression* (Baltimore: Johns Hopkins University Press, 1977).
- Stremovskii, V. A. *Uchastniki predvaritel'nogo sledstviia v Sovetskom ugolovnom protsesse* [The Participants in the Preliminary Investigation in Soviet Criminal Procedure] (Rostov: Rostov University, 1966).
- Strum, Philippa. *Brandeis: Beyond Progressivism* (Lawrence KS: University of Kansas, 1993).
- Stychin, Carl F. *Governing Sexuality: The Changing Politics of Citizenship and Law Reform* (Oxford: Hart Publishing, 2003).
- Sverdlov, G. M. *Sovetskoe semeinoe pravo* [Soviet family law] (Moscow: State Publishing House of Legal Literature, 1958).
- Swarztrauber, Sayre A. *The Three-Mile Limit of Territorial Seas* (Annapolis MD: Naval Institute Press, 1972).
- Szabó, Imre, and Zoltán Péteri, eds. *A Socialist Approach to Comparative Law* (Leyden: Sijthoff, 1977).
- Talmadge, Herman. *You and Segregation* (Birmingham: Vulcan Press, 1955).
- Taracouzio, T. A. *The Soviet Union and International Law* (New York: Macmillan, 1935).
- Taussig, Frederick J. *Abortion – Spontaneous and Induced: Medical and Social Aspects* (St. Louis: C.V. Mosby, 1936).
- Thomas, Maurice Walton. *The Early Factory Legislation: A Study in Legislative and Administrative Evolution* (London: Thames Bank, 1948).
- Thompson, John M. *Russia, Bolshevism, and the Versailles Peace* (Princeton NJ: Princeton University Press, 1966).
- Tolley, Howard. *The U.N. Commission on Human Rights* (Boulder CO and London: Westview Press, 1987).
- Trainin, A. N. *Ugolovnaia otvetstvennost' gitlerovtsev* [The Criminal Responsibility of the Hitlerites] (Moscow: Law Publishing House of the People's Commissariat of Justice, 1944).

Bibliography

- Trotsky, Leon. *The Revolution Betrayed: What Is the Soviet Union and Where Is It Going?* (New York: Pioneer Publishers, 1945).
- Tucker, Robert C. *The Lenin Anthology* (New York: W. W. Norton, 1975).
- Tully, Andrew. *CIA: The Inside Story* (New York: Morrow, 1962).
- Ulam, Adam. *A History of Soviet Russia* (New York: Praeger, 1976).
- Vansittart, Robert. *Bones of Contention* (New York: Alfred Knopf, 1945).
- Vansittart, Robert. *Lessons of My Life* (New York: Alfred Knopf, 1943).
- Vyshinskii, Andrei. *The Law of the Soviet State* (New York: Macmillan, 1948).
- Watson, Phiippa. *Social Security Law of the European Communities* (London: Mansell, 1980).
- Welles, Sumner. *Where Are We Heading* (New York: Harper, 1946).
- Wise, David, and Thomas B. Ross. *The Invisible Government* (New York: Random House, 1964).
- The Wolfenden Report: *Report of the Committee on Homosexual Offenses and Prostitution* (New York: Stein & Day, 1963).
- The Woman Question: Selections from the Writings of Karl Marx, Frederick Engels, V. I. Lenin, Joseph Stalin* (New York: International Publishers, 1951).
- World League for Sexual Reform. *Sexual Reform Congress, Proceedings of the Second Congress, Copenhagen, July 1–5, 1928* (Copenhagen: Levin & Munksgaard, 1929).
- World League for Sexual Reform. *Sexual Reform Congress, Proceedings of the Third Congress, London, September 8–14, 1929* (London: Kegan Paul, 1930).
- World League for Sexual Reform. *Sexualnot und Sexualreform: Proceedings of the Fourth Congress, Vienna, September 16–23, 1930* (Vienna: Elbemühl-Verlag, 1931).
- Wortman, Richard. *The Development of a Russian Legal Consciousness* (Chicago: University of Chicago Press, 1976).
- Yiannapoulos, Athanassios N., ed. *Civil Law in the Modern World* (Baton Rouge: Louisiana State University Press, 1965).
- Zigler, Edward F., and Meryl Frank. *The Parental Leave Crisis: Towards a National Policy* (New Haven CT: Yale University Press, 1986).
- Zinn, Howard. *A People's History of the United States* (New York: Harper & Row, 1980).

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